

Panaji, 8th September, 2011 (Bhadra 17, 1933)

SERIES II No. 23

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 22 dated 3-9-2011 namely:- Extraordinary dated 7-9-2011 from pages 527 to 528 regarding Notification from Goa Legislature Secretariat.

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 8/78/2007-08/D.Agr/246

Upon promotion of the Officers to the post of Deputy Director of Agriculture vide Order No. 8/78/2007-08/D.Agr/245 dated 29-08-2011, Government is pleased to order postings of the following Deputy Directors of Agriculture, of this Directorate, as indicated below, in public interest with immediate effect:

Sr. No.	Name & Designation	Place of posting
1	2	3
1.	Shri Girish D. Kamat	Dy. Director of Agriculture (Water Shed).
2.	Shri Vinod Deshmukh, Dy. Director, GTIDC, Colvale, Bardez, on deputation	Dy. Director of Agriculture (Agronomy) against vacant post.
3.	Shri Prakash Jamble	Dy. Director of Agriculture (Hort.) against vacant post.

In view of above, the deputation of Shri Vinod Deshmukh to GTIDC vide Order No. 1/4/1/2004-05/D.Agr/279 dated 19-11-2010 is hereby curtailed to enable him to resume his new posting on promotion.

Further, Government is pleased to transfer Shri Satish C. Dev, Asstt. Director of Agriculture

(Hort.) at the Directorate of Agriculture, Tonca, as Asstt. Director of Agriculture (Farmers Training), Ela, Old Goa, in place of Shri P. Jamble, who has been transferred on promotion to the post of Dy. Director of Agriculture (Hort.).

By order and in the name of the Governor of Goa.

S. S. P. Tendulkar, Director & ex officio Joint Secretary (Agriculture).

Tonca, Caranzalem, 29th August, 2011.

Department of Finance
Revenue & Control Division

Order

No. 2/6/87-Fin(R&C)/Part II

The Governor of Goa is pleased to promote on ad hoc basis, the following incumbents holding the post of Excise Inspector (Group 'C') to the post of Superintendent of Excise (Group 'B' Gazetted) in the Office of Commissioner of Excise, Panaji in the pay scale of PB—2, ` 9,300+34,800+4,600 (G. P.) with immediate effect :

Sr. No.	Name of the Officer
1.	Shri Narayan S. Nerurkar.
2.	Shri Shripad Talaulikar.
3.	Shri Caetano F. P. Fernandes.
4.	Shri Piedade Fernandes.
5.	Shri Milagres Soares (ST).

The above appointments shall be for a period of six months in the first instance.

The above ad hoc appointments will not bestow on the promoted Officers any claim for regular appointment and the service rendered on ad hoc basis in the grade will not count for the purpose of seniority in that grade or for eligibility for promotion to the next higher grade.

Shri Mohan Kambli, who is officiating as Superintendent of Excise in terms of Order No. 2/6/87-Fin(R&C) Part dated 15-05-2008 shall continue with same arrangement.

By order and in the name of the Governor of Goa.

Ajit Pawaskar, Under Secretary, Finance (R&C).

Porvorim, 26th August, 2011.



Department of Labour



Notification

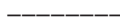
No. 28/1/2011-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 16-06-2011 in reference No. IT/26/06 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 26th August, 2011.



IN THE LABOUR COURT-II GOVERNMENT OF GOA AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/26/06

Shri Santosh G. Vernekar,
House No. 699, Thana,
Cortalim-Goa.

... Workman/Party I

V/s

Goa Shipyard Ltd.,
Vaddem,
Vasco-da-Gama.

... Employer/Party II

Workman/Party I represented by Adv. D. S. Shirodkar.

Employer/Party II represented by Adv. M. S. Bandodkar.

Panaji, dated: 16-06-2011

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by its order dated 20-06-2006

bearing No. 28/26/2006-LAB/367 referred the following dispute for adjudication by this Labour Court-II of Goa.

"(1) Whether the action of the Management of M/s. Goa Shipyard Ltd., Vaddem, Vasco-da-Gama-Goa, in dismissing Shri Santosh Vernekar, Konkani Translator (Grade II), from services with effect from 15-10-2001, is legal and justified?"

(2) If not, to what relief, the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/26/06 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman'), filed his statement of claim on 11-08-2006 at Exhibit 3. The facts of the case in brief as pleaded by the Workman are that he was employed as "Assistant Grade II (Personnel)/Konkani Translator" with the Employer/Party-II (for short "Employer") since 05-05-1989. He stated that he continued to work efficiently and peacefully till 20-06-1992, when the Employer issued charge-sheet-cum-suspension Order No. GSL/04/1/2378 dated 20-06-1992 to him and suspended him from the service. He stated that he was also issued another charge-sheet bearing No. GSL/04/1/2378 dated 10-07-1992 by the Employer. He stated that he had submitted his written explanation on 23-06-1992 and 18-07-1992 respectively to the aforesaid charge-sheets issued to him. He stated that one Shri Rohit Lobo was appointed as an enquiry officer to conduct an enquiry into the charges levelled against him. He stated that though the enquiry proceedings were concluded on 25-01-1997, the enquiry officer did not submit his report nearly for about four and half years inspite of repeated request both verbal as well as written by him. He stated that he had received the findings of the enquiry officer on 05-07-2001. He stated that the Employer had tried to justify the delay on the part of the enquiry officer by stating that he had met with an accident. He stated that the Employer issued an order dated 15-10-2001 dismissing him from their services after nine and half years from his suspension order. He submitted that such an inordinate delay is not at all justifiable as he was paid only subsistence allowance @ 75% of his last drawn pay as on 20-06-1992. He stated that the allowances paid were also on the basis of the rates as on 20-06-1992, without any enhancement. He stated that he was precluded from taking up any other employment elsewhere. He stated that the enquiry officer in his findings submitted to the Employer

held that the charges levelled against him are proved. He stated that the Employer Company dismissed him from their services by solely relying on the enquiry report. He stated that thereafter he vide his representation dated 17-11-2001 appealed against the said dismissal order before the Chairman and the Managing Director of the Employer Company who was the Appellate Authority. He stated that the said appeal filed by him has been dismissed by the appellate authority. He stated that he therefore raised an Industrial Dispute before the Deputy Labour Commissioner, Margao. He stated that the Deputy Labour Commissioner, Margao forwarded the said dispute raised by him to the Assistant Labour Commissioner, Vasco-da-Gama, which ended in failure due to the adamant attitude of the Employer. He submitted that the findings of the Enquiry Officer are not based on the facts and documentary evidence on record. He submitted that he was not given a fair opportunity to defend himself in the enquiry proceedings as Enquiry Officer failed to issue summons to the Officials whose names were given by him as his witnesses. He submitted that the Enquiry Officer also failed to direct the Employer to produce the crucial records, which he had sought. He therefore prayed that his dismissal from services by the Employer be declared as arbitrary and illegal and hence the said dismissal order dated 15-10-2001 be quashed and set aside. He also prayed that he may be reinstated in service of the Employer Company with full back wages and continuity in services.

3. The Employer filed their written statement on 06th July, 2007 at Exhibit-5. The Employer controverted the claim of the Workman preliminarily by stating that the entire reference is bad in law and not maintainable since the Employer Company is a Central Government Undertaking under administrative control and supervision of the Ministry of Defence, Government of India and is in the business of Ship Building and Ship repairs for the Indian Navy and Coast Guards, Union of India. The Employer Company stated that more than fifty one percent of their share capital is held by the Government of India and therefore the Central Government is the appropriate Government for them and not the Government of Goa and hence the reference made by the Government of Goa is without any jurisdiction. The Employer Company stated that the Workman was appointed w. e. f. 05-05-1989 as 'Konkani Translator' as Assistant Grade-II Categories and after completion of the probation period of six months, he was confirmed in the

service. The Employer Company further stated that since there was no required workload as 'Konkani Translator', as Assistant Grade-II has to carry out other duties, he was given additional duties of processing the medical claims of their employees who were outside the purview of ESI Coverage and their dependants under group medical insurance scheme implemented with the United India Insurance Co. Ltd. The Employer Company stated that the Workman was responsible for maintaining the records of the Workmen and their dependants for the said benefits, inspection of the claims received from the Workmen and submitting the same to the Insurance Company after verification/endorsement by the Medical Officer of the Company, arranging the reimbursement and disbursement of the said claims through pay sheets submitted to the Accounts Department or directly as the case may be. The Employer Company stated that the Workman for that purpose was given a personal computer. The Employer Company stated that the Workman started using the said privileges and was involved in getting illegal and unjustified benefits thereby made false enrollments of his personal dependants under the Group Medical Insurance Scheme in contravention to Office Order No. 196 dated 20-12-1988 and fraudulently claimed medical bills against them. The Employer Company stated that though as per the scheme and as per Office Order No. 85 dated 12-06-1990, the grandfather and grandmother are not the dependants and are not entitled to give the benefits of the Group Medical Insurance Scheme, he illegally included the names of his grandparents in contravention with the terms of the Scheme without permission or information to any of his superiors and took fraudulently the benefits of the said Scheme. The Employer Company further stated that though the Workman was not married, by manipulating records he showed one name claimed to be his wife as dependant to get the illegal benefits of the said Scheme. The Employer Company stated that it was the duty and responsibility of the Workman to verify if any Employee has given the names of wrong dependants and/or if the said dependants are covered or not under the scheme and if there is any mistake on the part of the Employee, the Workman was required to get it rectified and corrected from the concerned Employee. The Employer Company stated that having full knowledge of it, he illegally inserted wrong names as his dependants for illegal personal gains and thereby duped the Company's amount. The Employer Company stated that the Workman also manipulated the pay sheets for self-benefits.

Therefore he was issued a charge-sheet-cum-suspension order dated 20-06-1992 for serious acts of misconduct, misdeeds committed by him, as he acted in contravention to the Office Orders. The Employer Company stated that the Workman was not only restricted to above illegal acts, but also involved in submitting false claims to Insurance Company directly on his own and without their knowledge for ill full motive and personal gains. The Employer Company further stated that there were various complaints against him from the other Workmen/Employees about their claims and embezzlement of their amount and therefore he was issued another charge-sheet dated 10-07-1992. The Employer Company stated that though he submitted his explanation to both the charge-sheets, the same were not satisfactory and hence it has conducted two different enquiries into both the charge-sheets issued to him. The Employer Company stated that full opportunity was given to the Workman during the enquiry or otherwise to defend his case. The Employer Company stated that the principles of natural justice were fully followed in letter and spirit. The Employer Company stated that he was allowed to inspect the documents and also provided the copies of the documents. The Employer Company stated that during the enquiry he was represented by a well known advocate of his choice and he fully participated in both the enquiries. The Employer Company stated that though the enquiries in both the charge-sheets were concluded in 1997, due to major accident to the Enquiry Officer, he was bed ridden for long time and hence could not submit his findings/report immediately after the conclusion of enquiry, which was submitted in December, 2000. The Employer Company submitted that the said delay was arising out of genuine reasons and for the facts, which were beyond their control as well as of Enquiry Officer. The Employer Company submitted that the Enquiry Officer after appreciating the entire evidence and documents on record of the enquiry, clearly came to the conclusion in his findings that the charges levelled against the Workman were proved beyond doubt. The Employer Company stated that the disciplinary authority after going through the enquiry proceedings, documents on record and findings of the Enquiry Officer, concurred the findings of the Enquiry Officer. The Employer Company stated that the charges levelled and proved against the Workman were grave and severe in nature as he was involved in misappropriation, embezzlement and fraud of the Company property and also misguided the

Company, the Employer Company lost the confidence in the Workman. The Employer Company stated that they decided to dispense with the services and he was issued a final show cause notice dated 02-07-2001 for the proposed punishment. The Employer Company stated that though the Workman submitted his reply to the said show cause notice, the same was not satisfactory, therefore the Workman was dismissed from their services vide their letter dated 15-10-2001. The Employer Company stated that thereafter the Workman submitted an appeal dated 17-11-2001 before the appellate authority. The Employer Company stated that the appellate authority after going through the entire records and charges levelled and proved against the Workman and having regards to the gravity of the charge proved against him, dismissed the said appeal of the Workman vide letter dated 16-02-2002. The Employer Company further submitted that it has conducted a fair and proper enquiry by following the principles of natural justice and other provisions of law including their standing orders and the findings of the enquiry officer are based on enquiry proceedings as well as the oral and documentary evidence on record. The Employer Company submitted that in the event if this Hon'ble Court comes to the conclusion that the enquiry is not properly conducted or is conducted by violating the principles of natural justice or that the findings of the Enquiry Officer are perverse and not based on evidence, they shall lead additional evidence to prove the allegation and to justify its action. The Employer Company submitted that having regards to the gravity of charges proved against the Workman, the punishment meted out is commensurate with the charges and proportionate to it and this Hon'ble Court should not interfere with their said administrative decision. The Employer Company submitted that her action in dismissing the Workman is just, proper and proportionate to the offence/misconduct committed and the Workman is not entitled to any relief much less the relief of reinstatement as claimed. The Employer Company denied each and every allegations of the Workman which are contrary to their aforesaid pleadings. The Employer Company stated that the allegations of the Workman that the Enquiry Officer failed to issue summons to the officials whose names were given to him as witnesses or that the Enquiry Officer failed to direct the Employer to produce the crucial records which he sought, has no substance since it is the responsibility and prerogative of the Workman to examine his witness of his own choice, the Management at the request

of the Workman can spare the said Workmen/ Employees if they desire and interested in giving the evidence and neither the Enquiry Officer nor the Management can force anybody to give the evidence in the domestic enquiry. The Employer Company also denied that it has not produced the crucial records as alleged and stated that the Workman was given the inspection of the records and also given the copies of the documents.

4. Thereafter, the Workman filed his re-joinder on 01-08-2007 at Exhibit-6. The Workman by way of his re-joinder reiterates and confirms all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer Company in their written statement, which are contrary and inconsistent with the statements and averments made by him. The Workman by way of his re-joinder stated that he was not given any Office Order or job specifications for processing the medical claims and therefore denied that he was responsible for maintaining the records of the Workmen and their dependants for the said medical benefits, inspection of claims received from Workmen etc. He stated that the then Manager (Personnel and Administration) Commander Shaikh and also the then Assistant Manager (Personnel and Administration) Mr. Amit Kumar Ray had orally told him to assist Mr. Diogo Coutinho (Asstt. Grade I) and Mr. Santosh Kumar (Asstt. Grade I) in processing the Medical Claims. He stated that he had no power to sign any documents of the Employer Company. He stated that the computer was allotted to the Personnel and Administration Department not only to process the Medical Claims, but also for other general work of Personnel and Administration Department and also time Office and any staff of the Department used to work on that computer and hence denied that he was allotted the personal computer to process the Medical Claims. He submitted that the reports of the Enquiry Officer is biased.

5. Based on the pleadings of the respective parties filed in the present proceedings, this Hon'ble Court framed certain issues on 14-10-2008 at Exhibit-18.

1. Whether this Industrial Tribunal has jurisdiction to try and to entertain the reference?
2. Whether the inquiry held against the Party I is fair and proper?
- 2A. Whether charges of the misconduct levelled against the Workman are proved

to the satisfaction of the Tribunal by acceptable evidence?

3. Whether action of the Party II in dismissing the Party I from service w.e.f. 15-10-2001 is legal and justified?
4. Whether the Party I is entitled to the reliefs as prayed for?
5. What Award?

6. My answers to the aforesaid issues are as under:

- | | |
|--------------|-----------------------|
| Issue No. 1 | : In the Negative. |
| Issue No. 2 | : In the Affirmative. |
| Issue No. 2A | : In the Affirmative. |
| Issue No. 3 | : In the Affirmative. |
| Issue No. 4 | : In the Negative. |
| Issue No. 5 | : As per final order. |

REASONS

7. *Issues No. 2 & 2A.*: While deciding the preliminary issue No. 2 and issue No. 2A, I have already discussed and came to the conclusion vide order passed in Interim Award dated 23-03-2010 that a fair and proper inquiry was conducted by the Employer Company against the Workman in accordance with the principles of natural justice and that the charges levelled against the Workman by two separate charge-sheets i.e. charge-sheet dated 20-06-1992 and charge-sheet dated 10-07-1992 have been proved satisfactorily by an acceptable evidence.

8. *Issue No. 1*: The Employer Company by way of preliminary objection contested the Claim of the Workman by alleging that it is a Central Government Undertaking under the administrative control and supervision of Ministry of Defence, Government of India and more than 51% of the share capital of the Company is held by the Government of India and therefore Central Government is the appropriate Government for them and therefore the reference made by the Government of Goa is without jurisdiction. The burden to prove the said allegation is therefore on the Employer. The Employer Company, however failed to adduce any material evidence in support of their aforesaid contention and consequently failed to prove their contention that the appropriate Government is the Central Government and not the State Government as far as Employer is concerned and hence this court has no jurisdiction to entertain the same. The issue No. 1 is therefore answered in the negative.

9. *Issue No. 3:* It appears from the pleadings filed by the Workman in the present case that he is aggrieved by the order of his dismissal w. e. f. 15-10-2001 issued by the Employer Company. The Workman therefore challenged his Order of dismissal by raising the present Industrial Dispute by contending that no fair and proper inquiry was held against him and that the findings of the Enquiry Officer are not based on evidence on records and hence the action of the Employer Company in dismissing him from the services w. e. f. 15-10-2001 is unjustified, arbitrary and illegal. The burden to prove the said contention is therefore on the Workman.

I have heard the arguments of Ld. advocates appearing for the respective parties. I have also carefully perused the records of the case and also considered the various oral as well as written submissions made by the Ld. Adv. for the respective parties.

10. While deciding the preliminary issues i.e. Issue No. 2 and Issue No. 2A, I have already discussed and came to the conclusion vide order passed in my Interim Award dated 23-03-2010 that a fair and proper enquiry was conducted by the Employer Company against the Workman in accordance with the principles of natural justice and that the charges levelled against the Workman by two separate charge-sheets i.e. charge-sheet dated 20-06-1992 and charge-sheet dated 10-07-1992 have been proved satisfactorily by an acceptable evidence.

11. Thus, once the misconduct on the part of the Workman has been proved, nothing survives in the matter. The only question left to be determined is whether a punishment imposed on the Workman is proportionate to the misconduct committed by the Workman. The Workman however in his entire pleadings filed in the present proceedings did not contend that the punishment imposed is disproportionate to the misconduct alleged to have been committed by him. Even otherwise Ld. Adv. D. S. Shirodkar appearing for the Workman during the course of his oral arguments and/or in his entire synopsis of written arguments filed in the present case did not submit that the punishment imposed is disproportionate to the misconduct. On the contrary, Ld. Adv. M. S. Bandodkar during the course of his oral arguments as well as in the synopsis of written arguments filed by him submitted that the punishment imposed on the Workman is fair and proportionate to the proved misconduct committed by him and relied upon series of decisions of Hon'ble Supreme

Court of India as well as Hon'ble High Courts on the point.

12. In the case of the **Regional Manager Rajasthan State Road Transport Corporation vs. Sohan Lal** reported in 2004 LLR 1139, the Hon'ble Supreme Court of India has held that *"In the above matter the industrial tribunal has rightly concluded that the Workman had indulged in a misconduct which has not only lead to monetary loss to the Corporation but it has also lost confidence in the Workman hence to continue him in employment by virtue of a judicial order it is an act misplaced sympathy which can find no foundations either in law or in equity"*. The Hon'ble Apex Court further held that *"When the misconduct proved, is one of dishonesty, the quantum of loss is immaterial. It is the loss of confidence that matters as such if the tribunal chooses to uphold the order of dismissal and refuses to interfere with such termination and the learned single judge of the high court agreed with the tribunal, then appellate bench of ought not to have interfered with the quantum"*.

13. In the case of **U.P. State Transport Corporation v/s Suresh Chand Sharma** reported in 2010 LLR 760, the Hon'ble Supreme Court of India has held that *"When there is a case of misappropriation by an employee, there cannot be any punishment lesser than dismissal from services"*.

14. In the case of **Indian Oil Corporation Ltd. & Anr. v/s Ashok Kumar Arora** reported in 1997 I CLR 659, the Hon'ble Supreme Court of India has held that *"Disciplinary proceedings against respondent for obtaining reimbursement on the strength of forged medical bills. He was instrumental in getting forged bills for others also. He was dismissed from service after enquiry when challenged by Writ Petition, High Court interfered with the quantum of punishment on ground of discrimination as others similarly places were let off lightly. In appeal by special leave, it is held that there is neither any discrimination resorted to by the Disciplinary Authority nor the punishment awarded the respondent was disproportionate to his misconduct and that the High Court has committed serious jurisdictional error while interfering with the quantum of punishment"*.

15. In the case of **Sushil Kumar Singhal v/s The Regional Manager, Punjab National Bank** reported in 2010 LLR 1025 the Hon'ble Supreme Court of India has held that *"Employee guilty of dishonesty and misappropriation, will not be set aside merely because the petitioner, though*

convicted by the criminal court under the probation of Offenders Act, has been acquitted, hence he cannot claim, as a right, to continue in service. Moral turpitude implies anything contrary to honesty, modesty or good morale or that a person indulge in shameful, wicked and base activity".

On carefully perusal of the aforesaid decisions of Hon'ble Supreme Court of India as well as the Hon'ble High Court of Bombay relied upon by the Ld. Adv. M. S. Bandodkar for the Employer I am of the firm opinion that it is the settled proposition of law that if an Employee/Workman commits a misconduct of misappropriation and dishonesty, there cannot be any punishment lesser than dismissal from services.

16. In the case in hand, the misconducts levelled against the Workman are theft, fraud or dishonesty in connection with the Employer's business or property inside or outside the establishment or theft of property of another employee within the premises of the establishment, commission of any act subversive of discipline or good behaviour on the premises or precincts of the establishment, obtaining any benefit under false pretext or by making false statements and pursuance of any conduct against the interest of the Company, etc. It is settled proposition of law that this Court shall not interfere with the quantum of punishment awarded to the Workman unless it is illogical or suffered from process of impropriety or shocking to the conscience of this Court. It has been proved by way of disciplinary inquiry held against the Workman that he has committed misconduct, theft, fraud, dishonesty in connection with the Employer's business or property inside or outside the establishment etc. which are grave and serious in nature and hence I am of the opinion that the punishment awarded to the Workman in dismissing his services is fair and proper and this Court shall not interfere in the administrative action of the Employer, hence it is held that the action of the Employer Company in dismissing the Workman from their services w.e.f. 15-10-2001 is perfectly legal and justified. The Workman is therefore not entitled to any relief. The issue No. 3 is therefore answered in affirmative.

In view of the above, I proceed to pass the following Order:

ORDER

1. It is held that the action of the Management of M/s. Goa Shipyard Ltd., Vaddem, Vasco-da-Gama-Goa, in

dis-missing Shri Santosh Vernekar, Konkani Translator (Grade II), from services with effect from 15-10-2001, is legal and justified.

2. The Workman, Shri Santosh Vernekar, is not entitled to any relief.
3. No order as to costs.
4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II

Notification

No. 28/1/2011-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 04-07-2011 in reference No. IT/49/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 26th August, 2011.

IN THE LABOUR COURT-II GOVERNMENT OF GOA AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/49/07

Mrs. Manik Kamat,
Shailesh Bldg.,
Opp. Pankaj Bar,
Haliwada, Britona,
Bardez-Goa.
V/s

... Workman/Party I

Shri Sai Labour Contract,
Co-op. Society Ltd.,
16, Second Floor,
Patto Centre, EDC Complex,
Panaji-Goa.

... Employer/Party II

Party I/Workman represented by Adv. Suhas Naik.

Party II/Employer represented by Adv. P. Chawdikar.

Panaji dated: 04-07-2011

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 11-09-2007 bearing No. 28/20/2007-LAB/823 referred the following dispute for adjudication to the Industrial Tribunal of Goa.

1. *Whether the action of the Management of Shri Sai Labour Contract Co-operative Society Limited, Patto Centre, Panaji, in terminating the services of Mrs. Manik Kamat, Office In-charge, with effect from 24-06-2006, is legal and justified?"*

2. *If not, to what relief the workperson is entitled?"*

2. On receipt of the reference, a case was registered under No. IT/49/07 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman'), filed her statement of claim on 31-12-2007 at Exhibit-8. The facts of the case in brief as pleaded by the Workman are that she was employed with the Employer/Party II (for short "Employer") having its office situated at Patto Centre, EDC Complex, Panaji-Goa. She stated that she was performing the work such as writing tender forms and submitting the same to various departments after approval of the Employer. She stated that she was also visiting several departments, making payments of salary to the other workers of the Employer by obtaining their signature on the Wage Register after getting approval from the Secretary and the Chairman of the Employer. She stated that she used to prepare the bills and submit the same to the various departments. She stated that the Employer Society is engaged in the business of providing labourers to various departments and establishments within the State of Goa and earns huge profit from the same. She stated that on 24-06-2006 the Chairman of the Employer Society called her in his office and informed her orally not to attend the office anymore and that her services stand terminated w. e. f. 26-06-2006. She stated that she has worked for full day on 24-06-2006 but when she had reported for work on 26-06-2006, she was not allowed to resume for work. She stated that she demanded an immediate reinstatement with full back wages vide her letter dated 28-06-2006. She stated that the said letter has been duly received by the Employer, however she was not allowed to resume for her duties w. e. f. 26-06-2006. She stated that she therefore raised an

Industrial Dispute before the Labour Commissioner, which ended in failure. She submitted that the action of the Employer Society in terminating her services w. e. f. 26-06-2006 is illegal, unjustified and bad in law. She stated that the Employer Society has also recruited new Workman in her place. She therefore prayed that the action of the Employer Society in terminating her services w. e. f. 26-06-2006 be held as illegal, unjust and bad in law and she be reinstated back in the service of the Employer Society with full back wages, continuity in services and other consequential relief.

3. The Employer Society controverted the claim of the Workman by filing their written statement on 09-04-2008 at Exhibit-11. The Employer by way of preliminary objection submitted that it is a Co-operative Society established under the provisions of the Maharashtra Co-operative Society Act, 1960 as applied to the State of Goa. The Employer submitted that the alleged dispute pertaining to the termination of services of the Party I therefore constitutes a dispute within the meaning of Section 91 of the said Act or for that matter the Goa State Co-operative Act, 2001. The Employer submitted that in view of above and the non-obstant clause contained in the said Section 91, the present dispute is not maintainable. The Employer Society stated that the Party I had worked with them only for six months. The Employer Society stated that they used to provide the work to the Party I only when they used to get tenders from the concerned departments. The Employer Society stated that the Party I used to work for half a day and she was paid Rs. 100/- per day for the said work whenever she was engaged. The Employer stated that they never issued an Appointment Letter to the Party I, however once it was brought to the notice of their Chairman by the P. F. Inspector that the Party I is in possession of Appointment Letter which is duly signed by their Chairman. The Employer has therefore reason to believe that the Party I has fraudulently used their letter head which was duly signed by their Chairman. The Employer Society stated that their Chairman Mr. Nair sometimes used to sign on the blank letterheads of the Society as he had to leave Goa very often to go to his native place at Kerala. The Employer Society stated that the Party I whenever engaged by them, used to look after the cleanliness of their office and sometimes used to collect the tender forms from the concerned departments. The Employer admits that it is engaged in the business of providing labourers to various departments and establishments within

the State of Goa. The Employer denied that they have terminated the services of the Party I w. e. f. 26-06-2006 and stated that the Party I of her own stopped attending duties w. e. f. 26-06-2006. The Employer stated that the Party I is still in possession of keys of their office. The Employer stated that at present they do not have any Employee working in their office and all the activities were carried out by the Secretary and the Chairman of their Society. The Employer finally prayed for rejection of the present reference issued by the Government of Goa.

4. Thereafter the Party I by way of her re-joinder confirms and reiterates all the submissions and averments made in her claim statement to be true and correct and denies all the statements and averments made by the Employer in their written statement which are contrary to the statements and averments made by her. The Party I stated that the termination of her services is not the subject matter under the Maharashtra Co-operative Societies Act, 1960 or The Goa Co-operative Societies Act, 2001 and hence the provision of the I. D. Act are squarely applicable to the present case. The Party I reiterates that she is a "Workman" as defined u/s 2(j) of the I. D. Act, 1947.

5. Based on the pleadings filed by the respective parties, this Court framed the following issues on 07-11-2008 at Exhibit-14.

1. Whether the Workman/Party I proves that she is a "Workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947?
2. Whether the Employer/Party II proves that the Party II is not an "industry" as defined in Section 2(j) of Industrial Disputes Act 1947?
3. Whether the Workman/Party I proves that her termination w. e. f. 24-6-2006 by the Employer/Party II is illegal & unjustified?
4. Whether the Employer/Party II proves that the present order of reference issued by the Govt. of Goa is not maintainable as alleged in para A & B as preliminary objections in her written statement?
5. Whether Workman/Party I proves that she is entitled for any relief?
6. What Award?

6. My answers to the aforesaid issues are as under:

- Issue No. 1 : In the Affirmative.
Issue No. 2 : In the Negative.

- Issue No. 3 : In the Affirmative.
Issue No. 4 : In the Negative.
Issue No. 5 & 6 : As per final Order.

REASONS

7. *Issue No. 1:* The Employer Society controverted the claim of the Party I by contending that the Party I is not a "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947. Hence the burden to prove the same is on the Party I.

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties.

8. Ld. Adv. Suhas Naik appearing for the Party I during the course of his oral arguments submitted that in order to prove her case, the Party I has examined herself. He submitted that the Party I, in her oral evidence, stated that she was designated as "Office-In-charge" and was doing the work of clerical in nature such as obtaining tender forms from various customers, filling the said forms, obtaining the signatures of the Secretary and the Chairman of the Employer Society and submitting the said tender forms to various departments, factories, industries and establishments, etc. He submitted that it has also come in the oral evidence of the Party I that she was also visiting the bank and depositing the money, maintaining the records of the amount received from various customers, preparing the pay slips based on the attendance of labourers supplied by the Employer Society, disbursing salaries to the labourers after approval of the Secretary and the Chairman, preparing the bills after approval of the Secretary and the Chairman, maintaining ESI & P. F. and other records of the labourers, maintaining of books and registers and materials in possession of the Employer Society. He submitted that in support of her oral evidence, the Party I has also produced on record her Letter of Appointment dated 25-07-2003 (Exb.W/1). He submitted that the Employer Society has examined Shri V. V. P. Nair, the Chairman of the Society. He submitted that the said witness of the Employer Society clearly admitted that Party I used to prepare the applications and sometimes used to prepare the tender forms. He submitted that the sole witness of the Employer was directed to produce certain documents such as Attendance Register, Wage Register, E. S. I. & P. F. returns maintained by the Employer Society, however he failed to produce the same by alleging that it was not maintained and/or do not possess. He therefore submitted that an adverse inference be drawn against the Employer Society.

9. On the contrary, Ld. Adv. P. Chawdikar for the Employer Society during the course of his oral arguments submitted that the Party I used to work intermittently for six months only. He submitted that the Employer Society used to provide the work to the Party I when they used to get tenders from the concerned departments and hence the Party I is not a "Workman" as defined u/s 2(s) of the I. D. Act, 1947.

I have carefully perused the entire records of the present case. I have also carefully considered the various legal submissions made by the Ld. Advocates for the respective parties.

10. Admittedly it has been pleaded and also stated on oath by the Party I that she was doing the work of clerical in nature such as obtaining tender forms from various customers, filling the said forms, obtaining the signatures of the Secretary and the Chairman of the Employer Society and submitting the said tender forms to various departments, factories, industries and establishments, etc. The oral evidence of the Party I on record indicates that she was also visiting the bank and depositing the money, maintaining the records of the amount received from various customers, preparing the pay slips based on attendance of labourers supplied by the Employer Society, disbursing salaries to the labourers after approval of the Secretary and the Chairman, preparing bills after approval of the Secretary and the Chairman, maintaining E. S. I. & P. F. and other records of the labourers, maintaining books and registers and materials in possession of the Employer Society. The sole witness of the Employer Society Shri V. V. P. Nair in his cross-examination admitted that only the applications were prepared by the Party I. He further stated that sometimes the Party I used to process the tender forms. The Employer denied the aforesaid oral evidence on record adduced by the Party I in her cross-examination. The Employer however failed to produce on record any material evidence in rebuttal. The Employer also failed to produce on record any statutory records such as Attendance Register, Wage Register, Bank Pass Book maintained by the Employer in the Goa State Co-operative Bank Ltd., Panaji-Goa, E.S.I. as well as P. F. records, etc. maintained by them on one pretext or other by giving improper justification such as records not maintained or do not possess. The said justification given by the Employer's sole witness for non-production of the statutory records appears to be false and fictitious and hence not acceptable.

11. The Party I has also produced on record her Appointment Letter dated 25-07-2003 (Exb. W/1). The Employer Society contends that it has not issued any such Appointment Letter to the Party I. The evidence on record indicates that the said Appointment Letter on record at Exb. W/1 is on the letter head of the Employer Society and contained its seal. The evidence on record also indicates that the Employer Society has also failed to take any action against the Party I for the alleged act of preparing the said Appointment Letter at Exb. W/1. Hence it is held that the said Appointment Letter of the Party I on record at Exb. W/1 is real and genuine.

12. Thus the oral as well as documentary evidence on record clearly establish that the Party I was performing the duties such as obtaining tender forms from various customers, filling the said forms, obtaining the signatures of the Secretary and the Chairman of the Employer Society and submitting the said tender forms to various departments, factories, industries and establishments. The oral evidence adduced by the Party I on record proves that she was also visiting the bank and depositing the money, maintaining the records of the amount received from various customers, preparing the pay slips based on the attendance of the labourers supplied by the Employer Society, disbursing salaries to the labourers after approval of the Secretary and the Chairman, preparing bills after approval of the Secretary and the Chairman, maintaining E. S. I. & P. F. and other records of the labourers, maintaining books and registers and materials in possession of the Employer Society. The aforesaid duties performed by the Party I are of clerical nature and hence she is a "Workman" as defined u/s 2(s) of the I. D. Act, 1947. The issue No. 1 is therefore answered in affirmative.

Issue No. 2:

13. The Employer Society controverted the claim of the Workman by alleging that it is not an "industry" as defined u/s 2(j) of the I. D. Act, 1947. The burden to prove the same is therefore on the Employer Society.

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties.

14. Ld. Adv. Suhas Naik appearing for Party I during the course of his oral arguments submitted that the Employer Society is engaged in the business of providing labourers to various Government departments and establishments and earning huge profits from the same and hence it is

an "industry" within the meaning of Section 2(j) of the I. D. Act, 1947.

15. On the contrary, Ld. Adv. P. Chawdikar representing the Employer Society during the course of his oral arguments submitted that the Party I is the sole Employee employed by the Employer Society and that too for intermittent period of six months and besides the Party I there is no any other Employee or Workman working for the Employer Society. He submitted that the Employer Society was earning a small profit and hence the Employer Society is not an "industry" as defined under the I. D. Act, 1947 and relied upon the decision of Hon'ble High Court of Bombay in the case of **Umashankar Jaiswal v/s Royal Auto Centre and anr. reported in 1988 1CLR 740.**

I have carefully perused the entire records of the present case. I have also carefully considered the various legal submissions made by the Ld. Advocates for the respective parties.

16. Admittedly the Workman was the only Employee employed in the office of the Employer Society to perform the clerical work. The evidence on record further indicates that the Employer Society has pleaded and also produced on record oral evidence stating that it is engaged in supplying labourers to the various departments and establishments within the State of Goa. The sole witness and the Chairman of the Employer Society in his cross examination stated that they were supplying labourers to the P.W.D., Government of Goa. The aforesaid oral evidence adduced by the Employer's witness is contradictory to his statement made in his Affidavit in Evidence as well as in the written statement filed on behalf of the Employer Society. The Employer also failed to produce on record any cogent evidence in support of his statement that they were supplying the contract labourers to the P.W.D., Government of Goa only. It is therefore held that the Employer Society was engaged in the business of supplying labourers to various Government departments and establishments within the State of Goa. The said Employer Society has failed to produce on record his Saving Pass Book maintained in the Goa State Co-operative Bank Ltd., Panaji-Goa, even after giving him directions to produce the same. The Employer Society also failed to produce the statutory records maintained by the Employer Society such as Attendance Register, Wage Register, Muster Roll, etc. on the flimsy grounds. The justification given by the Employer Society for failure to produce the said records as directed, appears to be suspicious and hence the

adverse inference is drawn against the Employer Society and it is held that if the aforesaid statutory records have been produced on record it would have gone against the Party II. Hence, it is held that the Employer Society was engaged in the business of supplying the contract labourers to the various Government departments and establishments by engaging the labourers within the State of Goa. Hence, the submissions made by the Ld. Adv. P. Chawdikar that the Party I was the only Employee employed by the Employer Society, is without any merits.

17. The term "Industry" has been defined u/s 2(j) of the I. D. Act, 1947 and it means "any systematic activity carried on by co-operation between an Employer and his Workmen (whether such Workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

(i) Any capital has been invested for the purpose of carrying on such activity; or

(ii) Such activity is carried on with a motive to make any gain or profit, and includes—

(a) Any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) Any activity relating to the promotion of sales or business or both carried on by an establishment,

But does not include—

(1) Any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.— For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organization wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space;

(7) any domestic service; or

(8) any activity, being a profession practiced by an individual or body of individuals, if the number of persons employed by an individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by co-operative society or club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.]”

18. Ld. Adv. P. Chawdikar representing the Employer Society during the course of his oral argument submitted that the Workman was the only Employee employed by the Employer Society and that too intermittently and hence the Employer Society is not an “industry” as defined u/s 2(j) of the I.D. Act and relied upon the decision of **Hon'ble High Court of Bombay of Umashankar Jaiswal and Royal Auto Centre reported in 1998 1 CLR 740**. In the said case before the Hon'ble High Court of Bombay there was only one Employee working with the Employer. The Employer was earning a small profit from the said business. The Hon'ble High Court of Bombay has held that the activity of the Employer cannot be said to be a systematic activity carried on with the co-operation of the Employer and Employees as the status of the Employee is not plural, but singular and hence it cannot be said to be a systematic activity carried on with the co-operation of the employees. The facts of the aforesaid case before the Hon'ble High Court of Bombay were totally different than in the present case, hence the principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is not applicable to the present case.

19. In the case in hand, though the Workman was a single employee working in the office of the Employer Society, there were other employees

whose services have been engaged by the Employer Society from time to time on contract basis and the Employer Society used to run their business of supplying contract labourers to various Government departments and other establishments within the State of Goa and earns profit. Thus there was systematic activity of providing contract labourers to various Government Departments and other establishments within the State of Goa. Of course the said activity of providing labourers to various departments and other establishments within the State of Goa was carried out with the co-operation of the labourers engaged by the Employer Society for their purpose. In the absence of engaging the services of the contract labourers, it is difficult to run the said business of the Employer Society. It is therefore held that the Employer Society is an “Industry” as defined u/s 2(j) of the I. D. Act, 1947. The issue No. 2 is therefore answered in the affirmative.

Issue No. 4:

20. I am deciding the issue No. 4 first prior to issue No. 3 as the said Issue No. 4 touches upon the very root jurisdiction of this Hon'ble Court to adjudicate the present dispute raised by the Workman.

I have heard the arguments of the Ld. Advocates appearing for the respective parties.

21. Ld. Adv. Suhas Naik representing the Workman during the course of his oral arguments submitted that the Party I is a “Workman” within the meaning of Section 2 (s) of the I. D. Act, 1947 and the Employer Society is an industry as defined u/s 2 (j) of the I. D. Act, 1947. Consequently the dispute raised by the Workman is an “industrial dispute” within the meaning of Section 2 (k) of the I. D. Act, 1947. Hence this Court has every jurisdiction to adjudicate the said industrial dispute raised by the Workman and referred by the Government of Goa in exercise of its powers conferred u/s 10-1(d) of the I. D. Act, 1947. He submitted that the present industrial dispute raised by the Party I is not a dispute as stated in Section 91 of the Maharashtra Co-operative Societies Act, 1960.

22. On the contrary, Ld. Adv. P. Chawdikar representing the Employer Society during the course of his oral arguments submitted that the Employer is a Co-operative Society established under the provisions of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa. He submitted that the alleged dispute pertaining to the termination of services of the

Workman therefore constitutes a dispute within the meaning of Section 91 of the said Act or for that matter under the Goa Co-operative Societies Act, 2001. He submitted that in view of above and the non-obstant clause contained in Section 91 of the Maharashtra Co-operative Societies Act, 1960, the present dispute is not maintainable and consequently this Court has no jurisdiction to decide the same and relied upon two decisions (1) In the case of *Rajajinagar Co-operative Bank Ltd. v/s P. O. Bangalore* and anr. reported in 2002(92) FLR 707 of Hon'ble High Court of Karnataka and another decision of Hon'ble Supreme Court of India, in the case of **R. C. Tiwari v/s M. P. State Co-operative Marketing Federation Ltd. & Ors. reported in (1997) 5 SCC 125.**

I have carefully perused the entire records of the present case. I have also carefully considered the various legal submissions made by the Ld. Advocates for the respective parties.

23. Admittedly, the Employer Society is a Co-operative Society, set-up under the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa. It is the contention of the Ld. Adv. P. Chawdikar for the Employer Society that in view of the non-obstant clause contained in Section 91 of the Maharashtra Co-operative Societies Act, 1960, this Court has no jurisdiction to adjudicate the present dispute raised by the Workman. It is therefore necessary to quote the Section 91 of the said Act.

Section 91—Disputes

(1) Notwithstanding (anything contained) in any other law for the time being in force, any dispute touching the constitution (elections of the committee or its officers other than elections of committees of the specified societies including its officer), conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society is affiliated or by a creditor of the society (to the Co-operative Court) if both the parties thereto are one or other of the following:—

(a) x x x

(b) x x x

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or

prescribed under Sections 43, 44 or 45, and any person claiming through such person:

(d) x x x

(e) x x x

Provided that, an industrial dispute as defined in clause (k) of Section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any Society other than a notified Society under Section 73-1C or a society specified by or under Section 73-G, or refusal of admission to membership by a society to any person qualified therefore [or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) of Section 156], [or any orders, decisions, awards and actions of the Registrar against which an appeal under Section 152 or 152A and revision under Section 154 of the Act have been provided.] shall not be deemed to be a dispute for the purposes of this Section].

Thus in view of the proviso contained in Section 91 of the said Act, it is crystal clear that an "industrial dispute" as defined u/s 2(k) of the I. D. Act, 1947 shall not be deemed to be a dispute as provided under Section 91 of the said Act.

24. In the case in hand, while discussing the issue No. 1 hereinabove, it has been held by me that the Party I is a "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947. Similarly, while discussing the issue No. 2 hereinabove, it has also held by me that the Employer Society is an "industry" within the meaning of Section 2(j) of the I. D. Act. Consequently, any difference or dispute raised by the Workman against the Employer is an "Industrial Dispute" within the meaning of Section 2 (k) of the I. D. Act. Proviso to Section 91 of the Maharashtra Co-operative Societies Act, 1960 clearly excluded an industrial dispute as defined u/s 2(k) of the I. D. Act, 1947 within the meaning of dispute as stated in the said Section 91. It is therefore held that the present industrial dispute raised by the Workman against the Employer Society is not a "dispute" within the meaning of Section 91 of the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa.

25. In the case of Rajajinagar Co-operative Bank Ltd., P.O. Bangalore and anr reported in 2002(92) FLR707, the Hon'ble High Court of Karnataka has held that "so far as the State of Karnataka is concerned all the disputes arising in all the co-operative societies and its employees including those concerning the terms of

employment, working condition and disciplinary actions can be referred for decision only to the "Registrar" under the Co-operative Act and no dispute in relation to such matter can be raised, referred to and declared under the provision of the I. D. Act for these reasons, we find it difficult to sustain the award of the Labour Court as also the judgement of the Ld. Single Judge". The said judgement has been passed by the Hon'ble High Court of Karnataka after interpreting Sec. 70 and 71 of the Karnataka Co-operative Societies Act, 1959, which lacks the Proviso as stated in Section 91 of the Maharashtra Co-operative Societies Act, 1960. Hence the aforesaid decision is not applicable to the present case.

26. Similarly, in the case of **R. C. Tiwari v/s M. P. State Co-operative Marketing Federation Ltd. & Ors. reported in (1997) 5 SCC 125**, before the Hon'ble Supreme Court of India, the petitioner, an Employee of a Co-operative Society, registered under the M. P. Co-operative Societies Act, 1960, was dismissed from service. A reference was made u/s 10 (1) of the I. D. Act, 1947. The Hon'ble Apex Court has held that the dispute relating to Management or business of the Society, as referred to in Section 64 of the M. P. Co-operative Societies Act, 1960 is very comprehensive. Special procedure has been provided under this Act and therefore a reference u/s 10 of the I. D. Act, 1947 stands excluded. Thus, a dispute as stated in Section 64 of the M. P. Co-operative Societies Act includes an industrial dispute as defined under the I. D. Act, 1947. However in view of proviso to Section 91 of the Maharashtra Co-operative Societies Act, 1960, an industrial dispute as defined under the I. D. Act, 1947 shall not be a dispute as stated in Section 91 of the said Act and as such the jurisdiction to adjudicate the said industrial dispute lies before the Industrial Tribunal or Labour Court as the case may be. Thus, Section 64 of the M. P. Co-operative Societies Act, 1960 and Section 91 of Maharashtra Co-operative Societies Act, 1960 differ from each other as far as the jurisdiction to adjudicate the industrial dispute as defined under the I. D. Act. Hence, the aforesaid decision of the Hon'ble Apex Court is not applicable to the present case.

Hence it is held that the Employer Society failed to prove that the present reference issued by the Government of Goa is not maintainable in view of the allegations made in para A & B as preliminary objections of the written statement. The issue No. 4 is therefore answered in the negative.

Issue No. 3:

27. It is the Workman who has challenged her termination of services w.e.f. 26-06-2006 by contending to be illegal, unjustified and bad in law. Therefore the burden to prove the same is on the Workman.

I have heard the arguments of the Ld. Advocates appearing for the respective parties.

28. Ld. Adv. Suhas Naik representing the Workman during the course of his oral arguments submitted that the Workman was in the employment of the Employer Society w.e.f. 23-07-2003 continuously till her termination of services w. e. f. 26-06-2006. He submitted that the services of the Workman has been orally terminated by the Employer w.e.f. 26-06-2006 without any reason or by following the prescribed procedure of law and/or without conducting any disciplinary enquiry by issuing show cause notice, charge-sheet, etc. He submitted that the termination of the Workman w.e.f. 26-06-2006 is amounting to illegal retrenchment of services and hence it is in violation of Section 25-F of the I. D. Act, 1947.

29. On the contrary, Ld. Adv. P. Chawdikar during the course of his oral arguments submitted that they have not terminated the services of the Workman, but it is the Workman who has abandoned her services by remaining absent w.e.f. 26-06-2006.

I have carefully perused the entire records of the present case. I have also carefully considered the various legal submissions made by the Ld. Advocates for the respective parties.

30. It is the contention of the Workman that she was working with the Employer Society since 23-07-2003 continuously till her termination of services w.e.f. 26-06-2006. On the contrary, it is the contention of the Employer Society that the Workman was in their employment only for six months and that too intermittently and that the Party I never worked for full day.

31. The Workman in support of her oral evidence that she was working with the Employer Society continuously since 23-07-2003 till the date of termination of her services w.e.f. 26-06-2006, produced on record her Appointment Letter dated 25-07-2003 (Exb.W/1) issued by the Chairman of the Employer Society. The said Appointment Letter issued to the Workman at Exb.W/1 clearly indicates that she was appointed initially for six months on probation from the date of her joining and during

the said period her performance if found satisfactory her services would be continued. Since the Employer Society failed to adduce on record any evidence either oral or documentary specifying the period for which the Workman had worked or not worked, it is held that the Workman was working with the Employer Society from 23-07-2003 continuously till the termination of her services w. e. f. 26-06-2006 and hence it is held that the Employer Society failed to prove that the Workman was had worked only for 6 months and that too intermittently or that she used to work for half a day and that she was paid Rs. 100/- whenever she was engaged.

32. It is the further contention of the Employer Society that the Workman of her own stopped attending her duties w. e. f. 26-6-2006. The aforesaid contention of the Employer Society does not appear to be satisfactory as the Workman has raised the present Industrial Dispute about her termination of services before the Assistant Labour Commissioner and Conciliation Officer, Panaji-Goa on 26-06-2006 i. e. immediately after two days of termination of her services and the Employer Society neither appeared before the Assistant Labour Commissioner and Conciliation Officer, Panaji-Goa nor communicated any fact that they have not terminated the services of the Workman but it is the Workman who stopped attending the duties w. e. f. 26-06-2006. Even otherwise assuming that the Workman had stopped attending the duties w. e. f. 26-06-2006 or to make out a case of abandonment, the Employer has failed to issue any notice to the Workman pointing out her unauthorized absence from duty and directing her to report for duties or initiated any disciplinary action against the Workman. Thus, the Employer Society has failed to comply the principles of natural justice as required and has been consistently held by the various Hon'ble high Courts and the Hon'ble Supreme Court of India.

33. The evidence on record indicates that the Employer Society has orally terminated the services of the Workman w.e.f. 26-06-2006. The Workman contended that the termination of her services w.e.f. 26-06-2006 amounts to illegal retrenchment of services and hence it is illegal, unjustified and bad in law. It is therefore necessary to examine the relevant provision i.e. Section 25-F of the I. D. Act, 1947.

Section 25-F of the Industrial Disputes Act reads as under:—

"No Workman employed in any industry who has been in continuous service for not less than

one year under an Employer shall be retrenched by the employer until—

(a) The Workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days of average pay [for every completed period of service] or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

34. In the present case, the Employer has failed to give one month's notice in writing indicating the reasons for retrenchment or the Workman has been paid in lieu of such notice, wages for the periods of the notice and Workman has been paid at the time of his retrenchment, compensation which is equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Thus the action of the Employer Society in terminating the services of the Workman w.e.f. 26-06-2006 is in violation of Section 25-F of the I. D. Act, 1947 as well as the very principles of natural justice. Hence it is held that the action of the Employer in terminating services of the Workman w.e.f. 26-06-2006 is illegal, unjustified and bad in law. Issue No. 3 is therefore answered in the affirmative.

Issue No. 5:

35. While discussing the issue No. 3 herein-above, it has been held by me that the action of the Employer Society in terminating the services of the Workman w. e. f. 26-06-06 is illegal and unjustified.

36. In the case of **M/s. Reetu Marbles v/s Prabhakant Shukla and Anr., reported in 2010 (124) FLR 72**, the Hon'ble Supreme Court of India has held that *"Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result*

but now, with the passage of time, a pragmatic view of the matter is being taken up by the Court realizing that an industry may not be compelled to pay to the Workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the Workman was retrenched”.

37. The Hon'ble Supreme Court of India in its case of **Senior Suptd. Telegraph (Traffic), Bhopal v/s Santosh Kumar Seal & ors. reported in 2010 III CLR 17** it has been held that “it is very well settled principle that relief by way of reinstatement with back wages, is not automatic, even if termination of Workman is illegal or in contravention of prescribed procedure”.

38. The Hon'ble Supreme Court of India in its another case of **Jagbir Singh v/s Haryana State Agriculture Marketing Board & anr. reported in 2009 III CLR 628** it has been held that “it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in the recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an Employee in contravention of the prescribed procedure, compensation instead of reinstatement has been held to meet the ends of justice”.

Thus, the Hon'ble Apex Court in its various series of decisions has consistently held that a relief of reinstatement with full back wages and consequential benefits is not automatic, even if the termination of the Workman is illegal or in contravention of prescribed procedures. I am bound by the precedent laid down by the Hon'ble Apex Court in its aforesaid decisions.

39. In the case in hand, the evidence on record indicates that the Workman has worked with the Employer Society continuously for the period starting from 23-07-2003 till 25-06-2006. It is noticed that the Workman has failed to plead that she is gainfully unemployed from the date of termination of her services w. e. f. 26-06-2006 till date. However the oral evidence on record indicates that the Workman is unemployed from

the date of termination of services till date and that she does not have any source of income. The evidence on record further indicates that she is surviving on the income of her husband. The evidence on record further indicates that the Workman has not tried for any other alternative job subsequently after the termination of services with the Employer Society. The evidence on record indicates that the age of the Workman as on date of filing the Affidavit in Evidence is 40 years and was drawing a salary of Rs. 3,000/- per month. In the circumstances the Workman is therefore entitled for reinstatement and continuity in services only. The evidence on record indicates that the Workman has not tried for an alternative job, hence she is not entitled for back wages.

In view of the above, I proceed to pass the following Order:

ORDER

1. It is held that the action of the Management of Shri Sai Labour Contract Co-operative Society Limited, Patto Centre, Panaji, in terminating the services of Mrs. Manik Kamat, Office In-charge, w. e. f. 24-06-2006, is illegal and unjustified.
2. The Employer Society Shri Sai Labour Contract Co-operative Society Limited, Panaji – Goa is hereby directed to reinstate the Workman, Mrs. Manik Kamat, immediately, with continuity in services.
3. No order as to cost.
4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II

Notification

No. 28/1/2011-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 07-07-2011 in reference No. IT/23/02 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor
of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 26th August, 2011.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/23/02

The President,
Goa Trade and Commercial
Workers Union,
Velho Bldg,
Panaji-Goa.

... Workmen/Party I

V/s

M/s. Mahalsa Services,
F-22, Kurtarkar Commercial
Arcade,
Behind Canara Bank,
Ponda-Goa.

... Employer/Party II

Workmen/Party I represented by Adv. Suhas Naik.

Employer/Party II represented by Adv. P. J. Kamat.

Panaji, dated: 07-07-2011

AWARD

1. In exercise of the powers conferred by Clause (d) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 01-04-2002 bearing No. 28/5/2002-LAB referred the following dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa.

"(1) Whether the action of M/s. Mahalsa Services, Contractor to M/s. Crag Martin Distillery (P) Ltd., Ponda-Goa, in terminating the services w.e.f. 01-08-2001 of the following Workpersons working as Operators, is legal and justified?"

1. Ms. Maya Shirodkar
2. Ms. Sharmila Matonkar
3. Ms. Jeevan Naik
4. Ms. Shoba Gaonkar
5. Ms. Glermina D'Costa
6. Ms. Primila Naik
7. Shri Francis Fernandes
8. Shri Sunil Kumar

(2) If not, to what relief, the Workpersons are entitled?"

2. On receipt of the reference, a case was registered under No. IT/23/02 and registered A/D notice was issued to the parties. The President, Goa Trade & Commercial Workers' Union (for short "Union") filed the statement of claim on 28-10-2002 at Exhibit-4 on behalf of the Workmen

named in the present Order of Reference. Facts of the case, in brief, as pleaded by the Workmen are that they were employed with the Employer/Party II (for short "Employer"). He stated that the Employer is a contractor to M/s. Crag Martin Distillery (P) Ltd., Ponda-Goa (for short "Principal Employer") and the Workmen named in the reference were employed by the Employer for the purpose of day to day manufacturing operations of Principal Employer, situated at Tilamol, Xeldem, Goa. He stated that they were employed by the Employer, however no Appointment Letter was issued to them. He stated that the Employer refused the employment to the Workmen without assigning any justified reason of whatsoever nature on 01-08-2001. He stated that at the time of illegal refusal of employment, all the Workmen had completed 5 years of continuous service except Shri Sunil Kumar who had completed 4 years of continuous service. He stated that they have repeatedly requested the Employer as well as Principal Employer to give them employment, however no heed of whatsoever nature was paid to their request. He stated that after illegally refusing employment to them, the Employer thereafter recruited new workers at their establishment in place of the Workmen. He stated that the Union thereafter, vide their letter dated 01-08-2001 raised an Industrial Dispute on the Principal Employer as well as on the Employer (Contractor) and demanded immediate reinstatement of services and a copy of the said Industrial Dispute was addressed to the Deputy Labour Commissioner, Government of Goa, Margao-Goa with a request to intervene in the matter. He stated that the said Industrial Dispute ended in failure as the Principal Employer as well as the Employer (Contractor) remained absent even after being duly served with the notices. He submitted that the action of the Employer as well as the Principal Employer in refusing of employment to the Workmen is illegal, unjustified and in violation of the applicable law. He submitted that at the time of refusal of employment, the Employer did not give any opportunity to defend and represent the Workmen. He submitted that the refusal of employment is illegal and bad in law and in contravention of Section 25-F of the Industrial Disputes Act, 1947. He submitted that the Employer ought to have afford a fair and proper opportunity to the Workmen of being heard and should have asked the Workmen to report back for duty before refusing employment to them. He submitted that the Employer has flouted the mandatory provisions of law before refusing the employment. He submitted that no inquiry of

whatsoever nature has been conducted prior to the refusal of employment to the Workmen. He submitted that the Employer has failed to issue any letters of warning, memo, show cause notice or charge-sheet to the Workmen before orally refusing the employment. He stated that the Workmen's families were solely dependent on their income. He submitted that at present the Workmen are without any source of livelihood and their family has to starve for their daily bread and butter. He therefore prayed that the action of the Employer and the Principal Employer in refusing employment to the Workmen w.e.f. 01-08-2001 be held as illegal and unjustified and the Employer be directed to reinstate the Workmen in their services with full back wages and continuation in services alongwith interest.

3. The Employer objected the claim of the Workmen by filing their written statement on 25-11-2002 at Exhibit-5. The Employer by way of preliminary objections submitted that the reference is not maintainable as there is no demand made by the Workmen on the management of the Employer in regards to termination of their services by the Employer and that the demand of the management that his contract with the Principal Employer has been terminated and consequently he had transferred all the Workmen including the Workmen under reference have not been referred for adjudication by the Appropriate Government. The Employer submitted that M/s. Craig Martin Distillery (P) Ltd., who is a necessary party has not joined as a party to this reference.

4. Without prejudice to the above, the Employer stated that he had taken a contract with the Principal Employer, situated at Tilamol, Xeldem, Quepem-Goa in the year 1996-97. The Employer stated that for the aforesaid purpose, he had employed around 50 unskilled workers from the village of Xeldem and were working at the factory of the Principal Employer since 1996-97. The Employer stated that the Principal Employer terminated his contract w.e.f. 01-08-2001. The Employer stated that consequent upon termination of the contract, he closed his establishment at Xeldem and offered an alternate employment to the Workmen at Verna Industrial Estate on the same terms and conditions. The Employer stated that some of the Workmen accepted the offer and started working at his other contract at Verna and the present eight Workmen named in the Order of Reference refused to accept an alternate employment at Verna and did not report for work

at Verna from 01-08-2001 and on the same day raised a dispute with the Principal Employer for refusal of employment by him w.e.f. 01-08-2001. The Employer stated that he had also informed the Conciliation Officer vide his letter dated 19-11-2001 filed in the conciliation proceeding the said fact, however the Workmen demanded additional compensation for settlement of the dispute. The Employer stated that his contract with the Company was not continuous and the employment of the Workmen was temporary and as such no Appointment Letter was issued to them. The Employer denied the overall case of the Workmen and prayed for the dismissal of the present claim of the Workmen.

5. Thereafter the Workmen filed their re-joinder on 13-1-2003 at Exhibit-6. The Workmen by way of their re-joinder confirmed and reiterated all the submissions and averments made by them in the claim statement to be true and correct and denied all the submissions and averments made by the Employer in their written statement, which are contrary and inconsistent to the statements and averments made by them.

6. Based on the pleadings of the respective parties filed in the present proceedings, the Court framed certain issues on 04-02-2003 at Exhibit-7.

1. Whether the Party I proves that the Party II terminated the services of the Workmen by refusing employment to them w.e.f. 1-8-2001?
2. Whether the Party I proves that the Party II has employed new workers after terminating their services?
3. Whether the Party I proves that termination of their service by the Party II w.e.f. 1-8-2001 is illegal and unjustified?
4. Whether the Party II proves that reference is not maintainable for the reasons stated in para 2 of the written statement?
5. Whether the Party II proves that its establishment at Xeldem is closed and the offer of alternate employment at Verna Industrial Estate was given to the Workmen but they refused the said offer and did not report for work at Verna?
6. Whether the Workmen are entitled to any relief?
7. What Award?

7. My answers to the aforesaid issues are as under:

Issue No. 1	: In the Affirmative.
Issue No. 2	: In the Negative.
Issue No. 3	: In the Affirmative.
Issue No. 4	: In the Negative.
Issue No. 5	: In the Negative.
Issue No. 6 & 7	: As per Final Order.

REASONS

Issue No. 1 & 5 :

8. It is the contention of the Workmen that they have been refused employment by the Employer w.e.f. 01-08-2001. On the contrary it is the case of the Employer that consequent upon the termination of his contract w.e.f. 01-08-2001 he closed his establishment at Xeldem and offered an alternate employment to the Workmen at Verna Industrial Estate, Verna-Goa, on the same terms and conditions. The burden to prove the said allegation is on the party who alleged the same.

I have heard the arguments of the Ld. Advocates appearing for the respective parties.

9. Ld. Adv. Suhas Naik during the course of his oral arguments submitted that the Workmen in the present order of reference were employed by the Employer in the factory of the Principal Employer, since 1996 continuously till 30-07-2001. He submitted that the Workmen were refused employment by the Employer w.e.f. 01-08-2001 without assigning any justified reasons of whatsoever nature. He submitted that the aforesaid fact has been clearly admitted by the Employer during the course of his cross examination. He submitted that though the Employer claimed that he had offered an alternate employment to the Workmen upon termination of his contract w.e.f. 01-08-2001 at Verna Industrial Estate, Verna-Goa, on the same terms and conditions, neither the Employer produced on record any such offer of alternate employment nor disclosed the name of the establishment where the Workmen were offered an alternate employment. The aforesaid fact clearly shows that no alternate employment was offered to the Workmen at any point of time, but they were refused employment w.e.f. 01-08-2001.

10. On the contrary, Ld. Adv. P. J. Kamat during the course of his oral arguments submitted that it has come in the oral evidence of the Employer that consequent upon the termination of contract with M/s. Crag Martin Distillery (P) Ltd. w.e.f. 01-08-2001 orally offered an alternate employment

at Verna Industrial Estate, Verna-Goa, however, the Workmen in the present order of reference refused to report at their place of transfer.

I have carefully considered the various oral as well as written submissions made by the Ld. Advocates for the respective parties. I have also carefully perused the records of the present case.

11. Admittedly all the Workmen in the present order of reference were employed by the Employer with the Principal Employer. It is also not in dispute that the contract of the Employer with the Principal Employer, has been terminated w.e.f. 01-08-2001. Though the burden to prove the present issue No. 1 is on the Workmen, they have failed to examine themselves or to produce on record any cogent evidence in support of their allegations that they have been refused employment by the Employer w.e.f. 01-08-2001. However Shri Pradeep Shet, the Proprietor and the sole witness of the Employer, in his cross examination clearly admitted that he does not remember since when he had refused the employment to the Workmen. He also admitted that he had not written any letter individually to each of the Workmen in the present dispute stating that the contract of supplying labour with the Principal Employer has come to an end on account of termination of contract and that an alternate arrangement has been made to provide them employment elsewhere. The Employer however claimed that he had orally told all the Workmen individually. However the Employer has failed to plead or state on oath or produce on record any cogent evidence in the form of document showing the details of the establishment or industry wherein an offer of alternate employment was given to the Workmen. It is just not enough to give the names of the industrial estate, but it was mandatory on the part of the Employer to give details such as name and address of the establishment or industry with whom an alternate employment was offered to the Workmen. Hence the allegations of the Employer that consequent upon the termination of his contract with the Principal Employer, he had given the offer of alternate employment to the Workmen in the present order of reference at Verna Industrial Estate, Verna-Goa, appears to be false. Hence it is held that the Employer failed to prove that consequent upon the termination of his contract w.e.f. 01-08-2001, he closed his establishment at Xeldem and offered an alternate employment to the Workmen at Verna Industrial Estate, Verna, Goa, on the same terms and conditions, but they refused the said offer and did not report for work at Verna.

It is further held that the Workmen proves that the Employer has refused the employment to the Workmen in reference w.e.f. 01-08-2001. The issue No. 1 is therefore answered in the affirmative and issue No. 5 is answered in the negative.

Issue No. 2 :

12. It is the contention of the Workmen that the Employer has employed new workers in their place after termination of their services. The burden to prove the aforesaid allegation is therefore on the Workmen. It was mandatory on the part of the Workmen to prove the said allegations by disclosing the names, designation and date of appointment, etc. of the workers who had been recruited by the Employer by leading material evidence. The Workmen have however failed to plead and also state on oath the necessary details such as names of the Workmen, their designation etc., who have been recruited in their place, after termination of services by the Employer. Since the Workmen failed to produce on record any material evidence in support of their allegations that after termination of their services the Employer has employed new workers in their place, it is held that the Workmen have failed to prove that the Employer has employed new workers in their place. Issue No. 2 is therefore answered in the negative.

Issue No. 3 :

13. The Workmen contended that the termination of their services by the Employer w.e.f. 01-08-2001 is illegal and unjustified. The burden to prove the said contention is therefore on them.

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties.

14. Ld. Adv. Suhas Naik, during the course of his oral argument submitted that the Workmen were refused employment by the Employer w.e.f. 01-08-2001 orally without assigning any reasons and without following the procedure established u/s 25-F of the I. D. Act. He submitted that at the time of refusal of employment to the Workmen, the Employer has not issued any letter of warning, memo, show cause notice or charge-sheet etc. to the Workmen. He submitted that no seniority list as required under Rule 76-A as well as Rule 77 of the Industrial Dispute (Central) Rules, 1957 has been followed and hence the action of the Employer in refusing employment to the Workmen is illegal and unjustified.

15. On the contrary, Ld. Adv. P. J. Kamat, during the course of his oral arguments submitted that

the Workmen has neither examined themselves nor produced any cogent evidence in support of their allegations that they have been refused employment by the Employer w.e.f. 01-08-2001. He submitted that on the contrary, the Employer has examined himself in support of his defence. He submitted that the evidence adduced by the Employer on record clearly indicates that consequent upon the termination of contract by the Principal Employer w.e.f. 01-08-2001, the Employer has offered an alternate employment to all his Workmen including the Workmen named in the present order of reference on the same terms and conditions at Verna Industrial Estate, Verna-Goa.

I have carefully perused the records of the said case. I have also carefully considered the various legal submissions made by the Ld. Advocates appearing for the respective parties.

16. While answering the issue No. 1 hereinabove, I have already discussed and came to the conclusion that the Workmen proves that they were refused employment by the Employer w.e.f. 01-08-2001. Similarly while answering the issue No. 5, I have already discussed and came to the conclusion that the Employer failed to prove that the offer of alternate employment was given to the Workmen, but they refused the said offer and did not attend for work at Verna.

17. The oral evidence adduced by the Union indicates that all the Workmen had completed five years of continuous service except the Workman Shri Sunil Kumar who had completed four years of continuous service as on 01-08-2001 with the Principal Employer through the Employer. The Employer admitted that all the Workmen were in his employment but denied that all the Workmen had completed five years of continuous service except Shri Sunil Kumar who had completed four years of continuous service as alleged. The evidence on record indicates that the Proprietor and the sole witness of the Employer in his cross examination stated that he does not remember as to whether all the Workmen in the present reference had joined in their services since April, 1996 except the Workman, Shri Sunil Kumar who joined in their services since January, 1997. The Employer also failed to produce on record any cogent evidence in the form of documents nor disclosed the length of continuous service rendered by the Workmen under reference in rebuttal to the oral evidence on record adduced by the Union. Hence it is held that all the Workmen had completed five years of continuous service except

the Workman, Shri Sunil Kumar who had completed four years of continuous service as on 01-08-2001.

18. The evidence on record further indicates that the contract between Employer and the Principal Employer has come to an end vide letter of the Principal Employer dated 04-07-2001 at Exhibit-8. The evidence on record further indicates that the Employer refused employment to all the Workmen named in the present order of reference consequent upon the termination of contract by the said Principal Employer. The evidence on record indicates that the Employer has failed to issue any show cause notice, warnings, memos or charge-sheets, etc. to the Workmen or hold any enquiry. The said refusal of employment of the Workmen w.e.f. 01-08-2001 amounts to retrenchment of their services. In terms of Section 25-F of the I. D. Act, 1947 and order retrenching a Workman would not be effective unless the condition precedent therefore are satisfied. Section 25-F of the I. D. Act postulates the following conditions to be fulfilled by an Employer for effecting a valid retrenchment.

Section 25-F:

"No Workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until—

- (a) The Workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the Workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) The Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days of average pay (for every completed period of service) or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]"

19. In the case in hand, there is nothing on record to establish the fact that the Employer has complied Section 25-F of the I. D. Act, 1947. Similarly, the Employer also failed to produce on record any seniority list as required under Rule-77 of the Industrial Dispute (Central) Rules, 1957 has been complied with by him. The evidence on record indicates that the Employer also failed

to follow Section 25-G of the I. D. Act, 1947. Thus the action of the Employer in refusing employment to the Workmen w.e.f. 01-08-2001 is in contravention of Section 25-F and 25-G of the I. D. Act, 1947 as well as Rule-77 of the I. D. (Central) Rules, 1957. Hence the action of the Employer in refusing employment to the Workmen under reference is illegal and unjustified. The issue No. 3 is therefore answered in the affirmative.

Issue No. 4 :

20. The Employer controverted the claim of the Workmen on preliminary ground that no demand notice was served upon their management in regard to termination of services by the Employer and that M/s. Crag Martin Distillery (P) Ltd. who is a necessary party, has not been joined as a party in the present reference. The Employer also contended that the demand of the management that his contract with the Principal Employer has been terminated and consequently he has transferred all his Workmen including the Workmen under reference has not been referred for adjudication by the Appropriate Government. The onus to prove the aforesaid contention is therefore on the Employer.

21. The evidence on record indicates that consequent upon refusal of employment by the Employer w.e.f. 01-08-2001 the Workmen approached Goa Trade and Commercial Workers' Union who in turn vide their registered A.D. letter dated 01-08-2001 at Exhibit-2-Colly raised an industrial dispute before the Principal Employer and a copy of the same was addressed to the Deputy Labour Commissioner, Government of Goa, Margao, with a request to intervene in the matter and also to the Employer. The said notice issued by the Goa Trade and Commercial Workers' Union at Exb. 2-Colly indicates that the Union has requested the Principal Employer to reinstate the Workmen in the present reference alongwith continuity in services. The evidence on record further indicates that though the copy of the said letter dated 01-08-2001 at Exb. 2-Colly was addressed to the Employer, there was no request made to him of whatsoever nature. Thus the evidence on record indicates that no demand notice was served upon the Employer.

22. Ld. Adv. P. J. Kamat representing the Employer in its synopsis of written arguments submitted that since no demand notice was served upon the Employer, the reference made by the Government in respect of the demand of the Workmen is not an "Industrial Dispute" as defined

u/s Section 2 (k) of the I. D. Act, 1947 and hence the reference is not maintainable and relied upon a decision of Hon'ble Supreme Court of India in the case of Sindhu Resettlement Corporation Ltd. v/s Industrial Tribunal of Gujarat and Ors. reported in 1968 SC 526 wherein it has been held that "if no dispute at all is raised by the employees with the management, any request sent by them to the Government would only be a demand by them and not an Industrial Dispute between them and their Employer".

23. The Hon'ble Supreme Court of India however in its subsequent judgement in the case of Shambhunath Goyal v/s Bank of Baroda reported in (1978) 2 SCC 353 distinguished its aforesaid Judgement passed in the case of Sindhu Resettlement Corporation Ltd. and held that—

24. *"The definition of industrial dispute in Section 2(k) of the Industrial Disputes Act, 1947 shows that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non".*

25. Thus the principle laid down by the Hon'ble Supreme Court of India in the case of Shambhunath Goyal is applicable to the present case. Hence the contention of the Employer that the reference is not maintainable or incompetent as no demand notice was served upon them in regards to the termination of their services is without any merits. Similarly M/s. Crag Martin Distillery (P) Ltd. is not a necessary party to the present reference as the present dispute is between the Workmen and the Employer i.e. between the Workmen named in present order of reference and the management of M/s. Mahalsa Services. No relief has been sought against the Principal Employer. The oral evidence adduced by the Employer on record indicates that the Employer M/s. Mahalsa Services is an independent legal entity and is independently covered under the E. P. F. and Misc. Provisions Act, 1952 and E.S.I. Act, 1948. The Award passed by this Court will be complete and effectual without making the Principal Employer as a party to the present proceedings. In my opinion M/s. Crag Martin Distillery (P) Ltd. is not a necessary party to the

present proceedings. Hence the submissions of Ld. Adv. P. J. Kamat for the Employer that M/s. Crag Martin Distillery (P) Ltd. is a necessary party and has not been joined as a party to this reference is without any merits.

26. It is further contended by the Employer that their demand that his contract with M/s. Crag Martin Distillery (P) Ltd. has been terminated and consequently he had transferred all its Workmen including Workmen under reference has not been referred for adjudication by the Appropriate Government. I do not find any merits in the aforesaid submissions of the Employer as neither the Employer has adduced any material evidence in support of his aforesaid allegations or produced on record a copy of the said demands nor it is a valid ground for rejecting the present order of reference issued by the Government of Goa in exercise of the power conferred u/s 10 (1) (d) of the I. D. Act, 1947. Hence it is held that the Employer failed to prove that the reference is not maintainable for the reasons mentioned in para 2 of their written statement. The issue No. 4 is therefore answered in the negative.

Issue No. 6:

27. While discussing the issue No. 3 herein-above, I have already discussed and came to the conclusion that the termination of services of the Workmen in the present order of reference by the Employer w.e.f. 01-08-2001 is illegal and unjustified.

Ld. Adv. P. J. Kamat, in the synopsis of written arguments filed in the present proceedings submitted that none of the Workmen in the present reference has either pleaded or stated on oath that after the refusal of employment by the Employer w.e.f. 01-08-2001 they are gainfully unemployed and hence no relief of back wages can be granted to the Workmen in the present reference and relied upon a decision of **Hon'ble Supreme Court of India in the case of Kendriya Vidyalaya Sangathan and Anr. v/s S. C. Sharma 2005(104) FLR 863**. The Hon'ble Apex Court in para 15 of its aforesaid Judgement has ruled as under:

"15..... When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places material in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard." I am bound by the precedent laid down by the Hon'ble Supreme Court of India in its aforesaid Judgement.

28. In the case of **M/s. Reetu Marbles v/s Prabhakant Shukla and Anr., reported in 2010 (124) FLR 72**, the Hon'ble Supreme Court of India has held that *"Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken up by the Court realizing that an industry may not be compelled to pay to the Workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the Employer would be compelled to go back to a situation which prevailed many years ago, namely, when the Workman was retrenched"*.

29. The Hon'ble Supreme Court of India in its case of **Senior Suptd. Telegraph (Traffic), Bhopal v/s Santosh Kumar Seal & ors. reported in 2010 III CLR 17** it has been held that *"it is very well settled principle that relief by way of reinstatement with back wages, is not automatic, even if termination of Workman is illegal or in contravention of prescribed procedure"*.

30. **The Hon'ble Supreme Court of India in its case of Jagbir Singh v/s Haryana State Agriculture Marketing Board & anr. reported in 2009 III CLR 628** it has been held that *"it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an Employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in the recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an Employee in contravention of the prescribed procedure, compensation instead of reinstatement has been held to meet the ends of justice"*.

Thus, the Hon'ble Apex Court in its various recent decisions has consistently held that a relief of reinstatement with full back wages and consequential benefits is not automatic, even if the termination of the Workman is illegal or in contravention of prescribed procedures. I am bound by the precedent laid down by the Hon'ble Apex Court in its aforesaid decisions.

31. In the case in hand, neither it has been pleaded by the Workmen nor adduced any material evidence to establish the fact that they are not gainfully employed or had made any efforts to

secure an alternate employment. In the circumstances, no relief of back wages can be granted to the Workmen in the present order of reference. The Workmen are however entitled to a relief of reinstatement and continuity in services.

In view of the above discussions, I proceed to pass the following Order:

ORDER

1. It is held that the action of M/s. Mahalsa Services, Contractor to M/s. Crag Martin Distillery (P) Ltd., Ponda-Goa, in terminating the services, w.e.f. 01-08-2001 of the Workpersons namely Ms. Maya Shirodkar, Ms. Sharmila Matonkar, Ms. Jeevan Naik, Ms. Shoba Gaonkar, Ms. Glermina D'Costa, Ms. Primila Naik, Shri Francis Fernandes and Shri Sunil Kumar working as Operators, are illegal and unjustified.
2. M/s. Mahalsa Services, Contractor is hereby directed to reinstate in services all the Workpersons namely, Ms. Maya Shirodkar, Ms. Sharmila Matonkar, Ms. Jeevan Naik, Ms. Shoba Gaonkar, Ms. Glermina D'Costa, Ms. Primila Naik, Shri Francis Fernandes and Shri Sunil Kumar with immediate effect alongwith continuity in services.
3. No order as to costs.
4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II

Notification

No. 28/1/2011-LAB

The following award passed by the Labour Court-II, at Panaji-Goa on 13-07-2011 in reference No. LC-II/IT/11/09 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 26th August, 2011.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/11/09

Shri Kisan Gaundalkar,
Rep. by The General Secretary
Kadamba Kamgar Union,
B-G-/10, Ground Floor,
Casa Imaculada,
Casa Falcao Road,
Panaji-Goa.

... Workman/Party I

V/s

The General Manager,
M/s. Kadamba Transport
Corporation Ltd.,
H. O. Paraiso de Goa,
Alto, Porvorim,
Bardez-Goa.

... Employer/Party II

Party I/Workman represented by Adv. A. Kundaikar.

Party II/Employer represented by Adv. P. R.
Nimbalkar.

Panaji, dated: 13-07-2011

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 22-09-2009 bearing No. 28/13/2009-LAB/958 referred the following dispute for adjudication to the Industrial Tribunal of Goa.

"(1) Whether the action of M/s. Kadamba Transport Corporation Limited, Porvorim, Goa, in refusing employment to Shri Kisan Gaundalkar, Conductor, w. e. f. 29-06-1996, is legal and justified?"

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/11/09 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman') filed his statement of claim on 08-12-2009 at Exhibit-5. The facts of the case in brief as pleaded by the Workman are that he joined in the services of the Employer Corporation in the year 1989 as a Conductor and was posted at Porvorim Depot. He stated that he was dismissed from services on

29-06-1996 when posted at Porvorim Depot. He stated that he had remained absent from duty on account of sickness of his mother and subsequently on the death of his mother. He stated that he had justified his absenteeism from duty by submitting the necessary documents to the Employer Corporation. He stated that inspite of submitting the justification, he was dismissed from services vide order dated 29-06-1996 without holding any departmental inquiry and without giving him any opportunity to controvert the charges. He submitted that since he had been dismissed on account of his absenteeism, it was imperative on the part of the Employer Corporation to hold a departmental inquiry before terminating his services. He stated that being aggrieved by the order of illegal dismissal, he filed an appeal before the Appellate Authority as provided under the Certified Standing Order of the Employer Corporation. He stated that the Appellate Authority was pleased to allow his appeal vide his order dated 06-01-2007 and ordered to appoint him as a fresh Conductor on probation. He stated that the Employer Corporation however failed and neglected to reinstate him in their services, despite the fact that the dismissal order was set aside by the Appellate Authority. He stated that the Appellate Authority was pleased to observe in the order that he being a regular Employee of the Employer, a proper procedure including issue of charge-sheet, public notice etc. should have been followed before the dismissal which was not done in the present case. He therefore submitted that it is explicitly clear that he was dismissed from the services in flagrant violation of the principles of natural justice. He stated that he had approached the Personal Officer of the Employer Corporation on 05-02-2007 to report for his duty alongwith an order dated 06-01-2007 passed by the Appellate Authority and requested him to do the needful. He stated that since he was not appointed as a fresh Conductor, he approached the Managing Director of the Employer Corporation and brought to his notice about the non-implementation of the order passed by the Appellate Authority. He stated that on 08-03-2007 he addressed a letter to the Managing Director of the Corporation and gave an undertaking that he shall not claim any benefits of the past services, seniority, etc. as ordered by the Managing Director of the Corporation. He stated that the Employer however failed and neglected to appoint him as a Conductor inspite of giving an undertaking. He stated that he therefore vide his letter dated 03-07-2007 brought to the notice of the Managing Director of the Employer Corporation

that the order passed in appeal has not been implemented, but no action has been taken by the said Managing Director of the Employer Corporation. He stated that he was issued a letter dated 13-03-2007 by the Personal Officer of the Employer Corporation, Shri T. K. Pawse that his case is considered for re-appointment to the post of Conductor with immediate effect and further directed him to approach the Goa Medical College for Medical Assessment. He stated that accordingly he got medically examined and the medical report was furnished to the Employer Corporation and he was waiting for an Appointment Order. He stated that he has however not received any Appointment Order. He submitted that non-implementation of the order passed by the Appellate Authority is an ex-facie illegal and he is therefore entitled to back wages from the date of the said order till he is permitted to join the duties. He submitted that refusal to appoint him as a fresh Conductor on probation is an illegal act. He stated that he was appointed on permanent post and the duties discharged by him were of regular Workman thereby conferring the status of regular Workman. He submitted that he is grossly discriminated against the whims and caprices of unmoving bureaucracy. He therefore prayed that the Employer be directed to reinstate him in services with full back wages and continuity in services from 06-01-2007 till he is reinstated in services.

3. The Employer Corporation controverted the claim of the Workman by filing their written statement on 01-02-2010 at Exhibit-6. The Employer stated that the Workman joined in their services w. e. f. 26-12-1990 as substitute conductor on daily wages and his appointment was liable to be terminated on 22-02-1999 if not determined earlier. The Employer stated that the Workman joined the services again w. e. f. 03-01-1991. The Employer stated that the Workman was appointed on probation vide their order dated 26-09-1991. The Employer submitted that as per the provisions of the Certified Standing Order in force, "if any Workman remains absent without intimation or prior permission for a period exceeding 30 days, he is deemed to have been resigned from the services and the Employer is entitled to consider such Workman having voluntarily resigned from the job". The Employer stated that the Workman remained continuously absent from his duties w.e.f. 28-04-1996 and therefore an appropriate notice was issued to him on 31-05-1996. The Employer stated that the Workman however failed to comply with the requirements of the said notice and did not report for work. The Employer stated that they

therefore vide their order dated 29-06-1996 deleted the name of the Workman from the Muster Roll of their Corporation as he was deemed to have left the services of their Corporation on his own accord. The Employer stated that the Workman did not agitate the said order at the relevant time, but accepted the said order and collected all his dues vide letter dated 06-06-1997. The Employer stated that the Workman had earlier remained continuously absent from his duties w.e.f. 26-11-1995 and as such an appropriate notice was issued to him on 12-02-1996 and again on 27-02-1996. The Employer stated that the Workman thereafter reported for his duties with explanation. The Employer stated that as his explanation was far from being satisfactory, but to give an opportunity, he was issued a warning letter on 13-03-1996 and was allowed to join the duties. The Employer stated that the Workman had filed an appeal after more than 10 years of the order dated 29-06-1996. The Employer submitted that neither there was continuity of agitation of cause nor appeal was supported with any documents and hence the order dated 06-01-2007 was illegal and was of the nature of setting up of a bad precedent. The Employer stated that the Board of Directors of their Corporation set aside the said order vide their Resolution No. 20/2008 dated 04-04-2008 and hence the said order dated 06-01-2007 was not implemented. The Employer denied that the Workman is the member of the said Union and hence, the said Union has no locus-standi to espouse the cause of the Workman. The Employer finally prayed for dismissal of present order of reference issued by the Government of Goa.

4. Thereafter an opportunity was given to the Workman to file his re-joinder to the written statement of the Employer, however Ld. Adv. Shri A. Kundaikar representing the Workman submitted that he does not wish to file any re-joinder.

5. Based on the pleadings filed by the respective parties, this Hon'ble Court framed the following issues on 22-03-2010 at Exhibit-8:

1. Whether the Workman/Party I proves that the Union has locus-standi to espouse the cause of the Workman?
2. Whether the Workman/Party I proves that he was working as a "Conductor" with the Employer/Party II since the year 1989 till the date of refusal of employment to him w.e.f. 29-06-1996?

3. Whether the Workman/Party I proves that the action of the Employer/Party II in refusing the employment to him w.e.f. 29-06-1996 is illegal and unjustified?
4. Whether the Employer/Party II proves that the Workman/Party I joined in their services w.e.f. 26-12-1990 as a substitute conductor on daily wages and appointed on probation vide order dated 26-9-1991?
5. Whether the Workman/Party I proves that he is entitled to any relief?
6. What Award? What Order?

6. My answers to the aforesaid issues are as under:

- Issue No. 1 : In the Affirmative.
 Issue No. 2 : In the Affirmative.
 Issue No. 3 : In the Affirmative.
 Issue No. 4 : In the Negative.
 Issue No. 5 : In the Affirmative.
 Issue No. 6 : As per final Order.

REASONS

Issue No. 1:

7. I have heard the arguments of the Ld. Adv. A. Kundaikar appearing for the Workman. Ld. Adv. P. Nimbalkar remained absent at the time of final arguments though ample opportunities were given to him.

Ld. Adv. A. Kundaikar appearing for the Workman during the course of his oral arguments submitted that in view of Section 2-A of the Industrial Disputes Act, a dispute raised by an individual Workman pertaining to his discharge, dismiss, retrenchment or otherwise termination of his services shall be deemed to be an "Industrial Dispute" notwithstanding that no other Workman or any Union of Workmen is a party to the dispute. He submitted that the Workman is a member of Kadamba Kamgar Union and as such the present dispute pertaining to the illegal termination of his services by the Employer has been espoused by the Kadamba Kamgar Union. He submitted that even otherwise an individual Workman can raise an Industrial Dispute pertaining to his illegal termination of services by the Employer.

I have carefully perused the entire records of the present case. I have also carefully considered the various legal submissions made by the Ld. Adv. A. Kundaikar for the Workman.

8. In the present case, it has been pleaded by the Union that the Workman is the member of the Kadamba Kamgar Union and as such the Union is

espousing the cause of the Workman in respect of the refusal of employment to him by the Employer. The oral evidence adduced by the Workman on record indicates that the Workman is the member of the Kadamba Kamgar Union. The evidence on record indicates that the Employer has however failed to adduce any material evidence of whatsoever nature in rebuttal. Hence it is proved that the Workman is the member of Kadamba Kamgar Union. Even otherwise on account of introduction of Section 2-A to the Industrial Disputes Act, 1947, a dispute raised by an individual Workman pertaining to his discharge, dismissal, retrenchment or otherwise termination of services by the Employer shall be deemed to be an Industrial Dispute notwithstanding that no other Workman nor any Union of the Workmen is a party to the dispute. Hence the contention of the Employer that the Union has no locus-standi to espouse the case of the Workman is without any merits. The issue No.1 is therefore answered in the affirmative.

Issues No. 2 & 4:

9. The Union has pleaded that the Workman was working as a Conductor with the Employer Corporation since the year 1989 till the date of his refusal of employment w.e.f. 29-06-1996. On the contrary, it is the case of the Employer that the Workman joined in their services w.e.f. 26-12-1990 as a "Substitute Conductor" on daily wages and appointed on probation vide order dated 26-09-1991. This Court therefore framed the issues No. 2 & 4 respectively by putting the burden to prove the same on the Workman and the Employer respectively.

I have heard the arguments of Ld. Adv. A. Kundaikar for the Workman. None present for the Employer at the time of final arguments.

10. Ld. Adv. A. Kundaikar appearing for the Workman during the course of his oral arguments submitted that in order to prove his case, the Union has examined the Workman as their sole witness. He submitted that the Workman in his oral evidence on record stated that he joined in the services of Employer Corporation in the year 1989 as a Conductor and was dismissed from services on 29-06-1996. In support of his oral evidence on record, the Workman produced on record documentary evidence such as order dated 06-01-2007 issued by the Employer (Exb. W/1), his application dated 24-08-2007 (Exb. W/3) and letter of the Employer dated 13-03-2007 (Exb. W/5).

I have carefully perused the entire records of the case. I have also carefully considered the various legal submissions made by the Ld. Adv. A. Kundaikar for the Workman.

11. It is the contention of the Workman that he joined the services of the Employer Corporation in the year 1989 as a Conductor and was posted at Porvorim Depot and continuously worked for the Employer Corporation till the date of his refusal of employment w.e.f. 29-06-1996. The oral evidence on record adduced by the Workman indicates that the Workman was working as Conductor with the Employer Corporation since 1989 till the date of refusal of employment to him w.e.f. 29-06-1996. The Employer also admits that the Workman was refused employment w.e.f. 29-06-1996 however stated that the Workman joined in their services w.e.f. 26-12-1990 as a Substitute Conductor on daily wages and his appointment was liable to be terminated on 22-02-1991, if not determined earlier. The Employer further contended that the Workman joined the services w.e.f. 03-01-1991 and he was appointed on probation vide order dated 26-09-1991. The Employer however failed to produce on record any material evidence either oral or documentary in support of his aforesaid allegations nor could point out the period or the dates of discontinuance of the services of the Workman. Hence it is held that the Workman was working as a Conductor with the Employer Corporation since the year 1989 till the date of refusal of his employment w.e.f. 29-06-1996. It is further held that the Employer failed to prove that the Workman joined in their services w.e.f. 26-12-1990 as a Substitute Conductor on daily wages and appointed on probation vide order dated 26-09-1991. The issue No. 2 is therefore answered in the affirmative and issue No. 4 is answered in the negative.

Issue No. 3:

12. It is the Workman who has contended that the action of the Employer Corporation in refusing him employment w. e. f. 29-06-1996 is illegal and unjustified. The burden to prove the same is therefore on him.

I have heard the arguments of the Ld. Adv. A. Kundaikar appearing for the Workman. Ld. Adv. P. Nimbalkar remained absent at the time of final arguments though ample opportunities were given to him.

13. Ld. Adv. A. Kundaikar appearing for the Workman during the course of his oral argument submitted that the Union, in order to prove their

case, has examined the Workman as their sole witness. He submitted that the Workman in his oral evidence on record deposed that he had remained absent on account of medical grounds of his mother and subsequently upon the death of his mother by submitting necessary documents to the Employer Corporation, however the Employer Corporation dismissed him from their services vide order dated 29-06-1996 for his absenteeism without holding any departmental inquiry nor given any opportunity to controvert the charges. He submitted that the oral as well as documentary evidence on record clearly established that he had filed an appeal before the Appellate Authority as provided under the Certified Standing Order of the Employer Corporation. He submitted that the evidence on record established that the Appellate Authority was pleased to allow his appeal vide his order dated 06-01-2007 and directed the Employer Corporation to appoint him as a fresh conductor on probation. He submitted that the oral evidence on record also established the fact that the Employer Corporation however failed and neglected to reinstate him in their services as directed by the Appellate Authority. He submitted that the evidence on record also established the fact that on 05-02-2007 he had approached the Personal Officer to report for his duties alongwith his order dated 06-01-2007 passed by the Appellate Authority and requested him to do the needful, however he was informed that necessary action is awaited and therefore requested to come after some days. He submitted that it has also come in the oral evidence of the Workman that he had approached the Managing Director pertaining to the non-implementation of the order passed by the Appellate Authority. He submitted that the evidence on record also established the fact that the Personal Officer of the Employer Corporation, Shri. T. K. Pawse was pleased to issue a letter dated 13-03-2007 stating that his case for re-appointment for the post of Conductor is considered with immediate effect and further directed him to go for medical assessment. Accordingly he had gone through the Medical Examination and the Medical report was furnished to the Employer Corporation and he was waiting for an order of re-appointment as fresh conductor. He submitted that the so called Resolution No. 20/2008 dated 04-04-2008 passed by the Board of Directors of the Employer Corporation is illegal, non-est and ultra virus of the Certified Standing Order of the Employer Corporation. He submitted that if at all the Employer Corporation was aggrieved by the order dated 06-01-2007 passed by the Appellate Authority, in that event the Employer Corporation should have challenged the same by raising an industrial dispute.

14. On the contrary, ample opportunities were given to the Employer to lead evidence in support of their defence, however the Employer Corporation failed to adduce any evidence in support of their defence so much so that neither *Ld. Adv. P. Nimbalkar* appearing for the Employer Corporation nor their authorized representative remained present on the scheduled dates of hearing and as such this Court was constraint to close the evidence of the Employer Corporation.

I have carefully perused the entire records of the case. I have also carefully considered the various legal submissions made by the *Ld. Adv. A. Kundaikar* for the Workman.

15. The oral as well as documentary evidence on record indicates that the services of the Workman were terminated by the Employer Corporation on account of his alleged, unauthorized absenteeism *w.e.f.* 28-04-1996 *vide* their order dated 29-06-1996 (Exb. E/1) by invoking the provisions of their Certified Standing Order which states that if any Workman, remains absent without intimation or prior permission for a period exceeding 30 days, he deemed to have been resigned from services and the Employer is entitled to consider such Workman having voluntarily resigned from the job.

16. The evidence on record further indicates that the services of the Workman with the Employer Corporation have been terminated without following the principles of natural justice or without holding any disciplinary inquiry pertaining to the alleged unauthorized absenteeism on part of the Workman and he was issued his final settlement dues *vide* letter of the Employer Corporation dated 06-06-1997 (Exb. E/2). The oral as well as documentary evidence on record further indicates that the Workman had filed an appeal dated 08-11-2006 before the Managing Director of the Employer Corporation which is an Appellate Authority as per Certified Standing Order of the Employer Corporation. The evidence on record further indicates that the Managing Director of the Employer Corporation *vide* its order dated 06-01-2007 (Exb. W/1) allowed the said appeal filed by the Workman after hearing both the parties and ordered the Employer Corporation to appoint the Workman as a fresh conductor on probation. The Appellate Authority also directed the Workman to file an undertaking that he will not claim any benefit of his past services, seniority, etc. since he has already claimed and received his final settlement dues upon his dismissal. The evidence

on record further indicates that the Workman had approached the Personal Officer of the Employer Corporation on 05-02-2007 to report for his duties alongwith the order dated 06-01-2007 passed by the Appellate Authority and requested the Personal Officer to do the needful, however he was informed that the necessary action is awaited. The oral as well as documentary evidence on record further indicates that the Workman *vide* his letter dated 08-03-2007 addressed to the Employer Corporation has given an undertaking that he will not claim any benefit of his past services, seniority etc, since he has already claimed and received his final dues as ordered by the Appellate Authority. The evidence on record further indicates that the Personal Manager of the Employer Corporation *vide* its letter dated 13-03-2007 (Exb. W/5) addressed to the Medical Superintendent, Goa Medical College, Bambolim-Goa, requested him to examine the Workman thoroughly and forward his Medical Report to the Office at the earliest. The evidence on record further indicates that the Workman *vide* its letter dated 24-08-2007 (Exb. W/3) addressed to the Managing Director of the Employer Corporation brought to his notice that no appointment order was issued to him even after allowing the appeal and requested the Employer Corporation to issue an appointment order. The evidence on record further indicates that the Workman *vide* its letter dated 8-12-08 (Exb. W/2) requested the Employer Corporation for issuing necessary appointment order, however no re-appointment order was issued to him without any satisfactory justification.

17. It is the contention of the Employer Corporation that the Workman remained continuously absent from his duty *w.e.f.* 28-04-1996 and therefore a notice was issued to him on 31-05-1996. However the Workman failed to comply with the request of the said notice and therefore his name was deleted from the Muster Roll of the Corporation as he was deemed to have left the services of the Employer Corporation of his own accord by invoking the provision of the Certified Standing Order of the Employer Corporation.

The Employer Corporation however failed to produce on record any material evidence in support of their aforesaid pleadings. Consequently, failed to prove the aforesaid facts pleaded by them. Admittedly, an appeal filed by the Workman before the Appellate Authority (Managing Director) was allowed *vide* order dated 06-01-2007 (Exb. W/1) and the Workman was ordered to be appointed as

a fresh conductor on probation. It is the further contention of the Employer Corporation that its Board of Directors has set aside the said order dated 06-01-2007 passed by the Appellate Authority (Managing Director) after disposing off the said Appeal filed by the Workman, vide their Resolution No. 20/2008 dated 04-04-2008. The Employer Corporation however failed to produce on record any material evidence either oral or documentary in support of their aforesaid pleadings. Consequently failed to prove the aforesaid fact. Even otherwise, the Employer Corporation has failed to specify the jurisdiction/authority of their Board of Directors to set aside the Order dated 06-01-2007 (Exb. W/1) passed by the Appellate Authority (Managing Director) vide Resolution No. 20/2008, dated 04-04-2008 in terms of the Certified Standing Orders of the Employment Corporation. In the circumstances the action of the Board of Directors of the Employer Corporation to set aside the order dated 06-01-2007 passed by the Appellate Authority is without having any jurisdiction and hence it is illegal, null and void and non-est in the eyes of law.

18. The evidence on record indicates that the Employer Corporation has failed to challenge and set aside the said order dated 06-01-2007 (Exb. W/1) passed by the Appellate Authority as provided under the Certified Standing Order. Therefore the said order dated 06-01-2007 (Exb. W/1) passed by the Managing Director of the Employer Company is still valid in the eyes of law. It is therefore held that the Workman has proved that the action of the Employer Corporation in refusing him employment from 29-06-2006 is illegal and unjustified. The issue No. 3 is therefore answered in the affirmative.

Issue No. 5 :

19. While discussing the issue No. 3 it has hereinabove held by me it is the action of the Employer Corporation in refusing employment to the Workman w.e.f. 29-06-1996 is illegal and unjustified. The Workman is therefore entitled to be reinstated with immediate effect. The Workman is also entitled to continuity in services.

20. In the case of Kendriya Vidyalaya Sangathan and Anr. v/s S. C. Sharma reported in 2005(104) FLR 863, the Hon'ble Apex Court in para-15 of its aforesaid Judgement has ruled as under:

"15..... When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully

employed. The initial burden is on him. After and if he places material in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard." I am bound by the precedent laid down by the Hon'ble Supreme Court of India in its aforesaid Judgement.

21. In the case in hand, neither the Workman has pleaded nor produced on record any material evidence either oral or documentary that he is not gainfully employed. In the circumstances, the Workman is not entitled for any back wages.

In view of above discussions, I proceed to pass the following Order.

ORDER

1. It is held that the action of M/s. Kadamba Transport Corporation Limited, Porvorim, Goa, in refusing employment to Shri Kisan Gaundalkar, Conductor, w.e.f. 29-06-1996, is illegal and unjustified.
2. The Employer Corporation is hereby directed to reinstate the Workman, Shri Kisan Gaundalkar as Conductor alongwith continuity in services, with immediate effect.
3. No order as to cost.
4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.



Department of Public Health

Directorate of Food & Drugs Admn.

Notification

No. DFDA/FSSA/1/2011/3755

In pursuance of Regulation 1.2.1.5 of the Food Safety and Standards (Licensing and Registration of Food Business) Regulation, 2011, I, Shri B. Vijayan, the Commissioner of Food Safety, hereby notify the following persons of the Directorate of Food & Drugs Administration, Panaji to discharge the function of "Registering Authority" for the areas as specified against their respective names for the purpose of registration of food business as specified in the said regulation, with immediate effect.

Sr. No.	Name of the Officer	Areas assigned
1	2	3
1.	Smt. Iva Fernandes, Assistant Local (Health) Authority	North Goa District.
2.	Smt. Sanjyot Uday Kudalkar, Assistant Local (Health) Authority	South Goa District.

B. Vijayan, Commissioner of Food Safety.
Panaji, 26th August, 2011.

Certificate

No. 6/11/2002-III/PHD

Read: Government Order No. 6/11/2002-III/PHD
dated 11-07-2011.

Certified that the character and antecedents of Dr. Anil Vishnu Rane and Dr. Ashish Srivastava, Lecturers in Psychiatry in the Institute of Psychiatry and Human Behaviour, Bambolim, mentioned in the above referred Order, have been verified by the District Magistrate, North Goa District, Panaji-Goa and nothing adverse has come to the notice of the Government.

B. S. Kudalkar, Under Secretary (Health).
Porvorim, 25th August, 2011.

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Department of Revenue

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Order

No. 22/12/2009-RD

Whereas, the Government of Goa, vide Notification No. 22/12/2009-RD dated 31-08-2009, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 25 dated 17-09-2009, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. land acquisition in second phase for protection of archaeological remains of the temple of Shree Mahalasa at Verna in Salcete Taluka (hereinafter referred to as the "said public purpose");

And Whereas, the Government of Goa, considered the report made by the Collector under sub-section (2) of Section 5A of the said Act and

on being satisfied that the said land is needed for the said public purpose, vide Notification No. 22/12/2009-RD dated 13-01-2011, issued under Section 6 of the said Act, and published in the Official Gazette, Series II No. 44 dated 27-01-2011, declared that the said land is required for the said public purpose.

Now, Therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Collector, South Goa District, Margao-Goa to take the order for acquisition of the said land.

By order and in the name of the Governor
of Goa.

Pandharinath N. Naik, Under Secretary (Rev-I).
Porvorim, 30th August, 2011.

Notification

No. 22/13/2009-RD

Whereas by Government Notification No. 22/13/2009-RD dated 23-08-2010 published on pages 544 to 546 of Series II No. 23 of the Official Gazette, dated 02-09-2010 and in two newspapers (1) "The Navhind Times" dated 26-08-2010 (2) "Pudhari" dated 26-08-2010, it was notified under Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification was likely to be needed for the public purpose viz. Land Acquisition for additional land at Murda, Mercas in continuation of Goa Bazaar.

And Whereas, the Government of Goa (hereinafter referred to as "the Government") after considering the report made under sub-section (2) of Section 5-A of the said Act is satisfied that the land specified in the Schedule hereto is needed for the public purpose specified above (hereinafter referred to as "the said land").

Now, Therefore, the Government hereby declares, under Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government also appoints, under clause (c) of Section 3 of the said Act, the Deputy Collector & SDO, Sub-Division, Panaji to perform the functions of a Collector, North Goa District, Panaji, for all proceedings hereinafter to be taken in respect of the said land, and directs him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the Office of the said Deputy Collector & SDO, Sub-Division, Panaji, till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Taluka: Tiswadi

Village: Murda

Survey No./ Sub-Div. No.	Names of the persons believed to be interested	Approx. area in sq. mts.
1	2	3
89/1	O: Comunidade of Murda. T: Joao Baptisto Gonsalves.	1982
89/2	O: Comunidade of Murda. T: Esmeralda Furtado.	2327
89/3	O: Comunidade of Murda. T: Datta Shiva Naik.	2434
89/4	O: Comunidade of Murda. T: Anand Raghuvir Naik.	2451
89/5	O: Comunidade of Murda. T: Cristova Antonio Braganca. T: Antonio Aleixo Braganca.	2347
89/6	O: Comunidade of Murda. T: Bhikaro Laxaman Naik.	1941
89/7	O: Comunidade of Murda.	594
88/1	O: Comunidade of Murda. T: Alexandre Martins.	1336
88/2	O: Comunidade of Murda. T: Marizinho Braganca.	1089
88/3	O: Comunidade of Murda. T: Joao Francisco Branganca.	1138
88/4	O: Comunidade of Murda. T: Remeto Fernandes.	1058
88/5	O: Comunidade of Murda. T: Arcanjo Nazareth.	1337
88/6	O: Comunidade of Murda. T: Joao Azavedo.	1919
88/7	O: Comunidade of Murda. T: Gosal Lazaro.	1969
88/8	O: Comunidade of Murda. T: Josa Lazaro.	756
88/9	O: Comunidade of Murda. T: Angnelo Fernades.	756
88/10	O: Comunidade of Murda. T: Vinayak Naik Uskaikar.	469
88/11	O: Comunidade of Murda.	250
87/1	O: Comunidade of Murda. T: Angelo Vigas. T: Maria Espicicsa Gonsalves.	1518
87/2	O: Comunidade of Murda. T: Agosto Martins.	975
87/3	O: Comunidade of Murda. T: Cruz Pereira. T: Cosme Francisco Pereira.	1080

1	2	3
87/4	O: Comunidade of Murda. T: Maria Nunes.	1167
87/5	O: Comunidade of Murda. T: Bras Dias.	1175
87/6	O: Comunidade of Murda. T: Rial Araujo.	1067
87/7	O: Comunidade of Murda. T: Filomento Pires.	1081
87/8	O: Comunidade of Murda. T: Thomas Fernandes.	1695
87/9	O: Comunidade of Murda. T: Maria Fernandes.	1975
87/10	O: Comunidade of Murda. T: Remedios Simao Dias.	948
87/11	O: Comunidade of Murda. T: Rosario Pereira.	1206
87/12	O: Comunidade of Murda. T: Vinayak Naik Uskaikar.	581
87/13	O: Comunidade of Murda.	469
78/1	O: Comunidade of Murda. T: Antonio Pereira.	1087
78/2	O: Comunidade of Murda. T: Ana Francisco Pereira.	1444
78/3	O: Comunidade of Murda. T: Violante Meio.	1400
78/4	O: Comunidade of Murda. T: Violante Meio.	1312
78/5	O: Comunidade of Murda. T: Vithal Vaigonkar.	1687
78/6	O: Comunidade of Murda. T: Vithal Vaigonkar.	1737
78/7	O: Comunidade of Murda.	412
78/8	O: Comunidade of Murda.	212
77/1	O: Comunidade of Murda. T: Antonio Araujo.	1289
77/2	O: Comunidade of Murda. T: Alexander Araujo.	1110
77/3	O: Comunidade of Murda. T: Alexander Araujo.	1219
77/4	O: Comunidade of Murda. T: Vincente Fernandes.	1267
77/5	O: Comunidade of Murda. T: Xavier Fernandes.	925
77/6	O: Comunidade of Murda. T: Mario Angelo Fernandes.	1094
77/7	O: Comunidade of Murda. T: Narayan Amonkar.	962
77/8	O: Comunidade of Murda. T: Narayan Amonkar.	550
77/9	O: Comunidade of Murda. T: Mahadev Amonkar.	1500
77/10	O: Comunidade of Murda. T: Francisco Nicolo Fernandes.	400
77/11	O: Comunidade of Murda.	469

1	2	3	1	2	3
91/17	O: Comunidade of Murda. T: Ana Rita Serroao.	1483	76/11	O: Comunidade of Murda. T: Jerone Fernandes.	1427
76/1	O: Comunidade of Murda. T: Vasudev Kundekar.	442		T: Vioiente Fernandes. T: Deodita Fernandes.	
76/2	O: Comunidade of Murda. T: Manuel Rapaso.	283	76/12	O: Comunidade of Murda. T: Esperance Pereira.	324
76/3	O: Comunidade of Murda. T: Agostinho Rapaso.	266	76/13	O: Comunidade of Murda. T: Domingo Caitano Dias.	212
76/4	O: Comunidade of Murda. T: Bostao Inacino Dias. T: Inas Caitano Dias.	619	76/15	O: Comunidade of Murda. T: Cruz Pereira. T: Rosano Fernandes. T: Leonario Dias. T: Domingo Caitano Dias.	1296
76/5	O: Comunidade of Murda. T: Maria Angelica Gonsalves.	447	<i>Boundaries :</i>		
76/6	O: Comunidade of Murda. T: Radhabai Naik.	697	North : S. No. 90/8, 9,7, S. No. 91/16,4.		
76/7	O: Comunidade of Murda. T: Maria Agnelo Fernandes. T: Radhabai Naik.	817	South : S. No. 79/17, Road, S. No. 76/17, 21 to 28.		
76/8	O: Comunidade of Murda. T: Vinayak Uskaikar. T: Radhabai Naik.	182	East : S. No. 86/3 to 27, S. No. 79/1 to 17.		
76/9	O: Comunidade of Murda. T: Deudit Fernandes. T: Radhabai Naik.	384	West : Nallah, S. No. 91/4, Village boundary of Calapur.		
76/10	O: Comunidade of Murda. T: Xavier Fernandes. T: Vinayak Uskaikar.	968	Total: 71013		
			By order and in the name of the Governor of Goa.		
			<i>Pandharinath N. Naik</i> , Under Secretary (Rev I). Porvorim, 6th September, 2011.		



Department of Rural Development Agency

District Rural Development Agency

Order

No. DRDA-N/9-140/11-12/4057

In pursuance to Order No. DRDA-N/9-129/06-07/2366 dated 05-10-2006 and powers vested under sub-sections 1 and 2 of Section 5 of the Right to Information Act, 2005 (Central Act No. 22) the Public Information Officer and Assistant Public Information Officers are appointed as under:

Sr. No.	Name of the Section of DRDA-North Goa	Designation of the Public Information Officer	Designation of the Assistant Public Information Officer	First Appellate Authority
1.	Administration Section	Project Officer, DRDA-North Goa	Accounts Officer I, DRDA-North Goa	Project Director, DRDA-North Goa.
2.	Technical Section	Executive Engineer, DRDA-North Goa	Assistant Engineer, DRDA-North Goa	Project Director, DRDA-North Goa.

K. V. Signapurkar, Project Director & ex officio Joint Secretary (RD).

Panaji, 5th September, 2011.

Department of Town & Country Planning

Order

Ref. No. Conf 1/6/Tcp/Macps/Group A/2011/3616

(Modified Assured Career Progressive Scheme (MACPS) Grant of financial upgradation to Group 'A' post with effect from 1-9-2008, on completion of 10/20/30 years of continuous regular service).

Reference:

1. M.A.C.P. Scheme, OM No. 1/1/82-PER(Part VI) dated 6-8-2009 read with OM No. 35034/3/2008-Estt(D) dated 19-5-2009.
2. DPC Committee constituted vide OM No. 2/7/76-PER(Vol. III) Part dated 19-10-2010.
3. Order No. Conf/1/6/TCP/MACPS/Group A/2011/3342 dated 4-8-2011.
4. Corrigendum No. Conf/1/6/TCP/MACPS/Group A/2011/3405 dated 9-8-2011.

On recommendation of the Departmental Promotion Committee on 28-7-2011 (on circulaion basis) the following officers of Group 'A' post are hereby granted the 2nd financial upgradation under Modified Assured Career Progressive Scheme (MACPS) as per O.M. referred above on completion of 10 years continuous regular service in the same grade as per details given below:

Sr. No.	Name, Designation (Order No. and Date of appointment to the present grade) and Pay Band+Grade Pay	Date of joining to the present grade (on regular basis)	Date of completion of 10 years in the present grade	Date of grant of second financial upgradation under MACP Scheme	MACP Scheme Pay Band and Grade Pay to be granted
1	2	3	4	5	6
1.	Shri James Mathew, Senior Town Planner (Appointed as Town Planner vide Order No. 4-1-8-96/TCP/440 dated 16-10-1998) Pay in PB—3, 15,600-39,100+GP=6,600/-	16-10-1998	15-10-2008	15-10-2008	PB—3, 15,600-39,100+GP=7,600/-.
2.	Shri S. M. Byakod, Senior Town Planner (Appointed as Town Planner vide Order No. 4-1-8-96/TCP/440 dated 16-10-1998) Pay in PB—3, 15,600-39,100+GP=6,600/-	16-10-1998	15-10-2008	15-10-2008	PB—3, 15,600-39,100+GP=7,600/-.
3.	Shri E. R. Godinho, Ex-Senior Town Planner (Appointed as Town Planner vide Order dated 3-9-1992) PB—3, 15,600-39,100+GP=6,600/-	3-9-1992	2-9-2002	1-9-2008	PB—3, 15,600-39,100+GP=7,600/-.

Their pay shall be fixed as per provisions of the OM referred at reference No. 1. They shall draw their pay and allowance from the Budget Head from which their pay and allowance are drawn at present.

They may exercise their option for their pay fixation under MACP Scheme within one month from the date of this Order.

This is issued with approval of the Government vide Note bearing No. Conf/1/6/MACPS/Group A/2011/TCP/3251 dated 1-8-2011.

This Order supersedes the Order and Corrigendum referred above at Sr. No. 3 & 4 respectively.

By order and in the name of the Governor of Goa.

S. T. Puttaraju, Chief Town Planner ex officio Joint Secretary.

Panaji, 26th August, 2011.



Department of Water Resources

Office of the Chief Engineer

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Order

No. 22-1-81/CE-WR/Adm.II/629

Read: This Office Order No. 22-1-81/CE-WR/
/Adm.II/405 dated 9-7-2010.

Government approval is hereby conveyed for extension of deputation of Shri Peter P. D'Souza, Executive Engineer/Surveyor of Works, in District

Rural Development Agency, North Goa District, Panaji, from 14-07-2011 to 13-07-2012, in public interest, on the same terms and conditions stipulated in Government O.M. No. 13-4-74-PER dated 12-2-1999 and as amended from time to time.

By order and in the name of the Governor of Goa.

S.T. Nadkarni, Chief Engineer & ex officio Additional Secretary (W.R.).

Panaji, 30th August, 2011.

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